

**URANIUM MILL TAILINGS OVERSIGHT**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Bill Wright**

**This act modifies the Radiation Control Act to authorize the Department of Environmental Quality to regulate uranium recovery and specified related operations. The act imposes a fee on these operations, with specified contingencies. This act also increases the size of the Radiation Control Board by two members.**

This act affects sections of Utah Code Annotated 1953 as follows:

**AMENDS:**

**19-1-108**, as last amended by Chapter 314, Laws of Utah 2001

**19-3-103**, as last amended by Chapter 243, Laws of Utah 1996

**19-3-104**, as last amended by Chapter 311, Laws of Utah 2001

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **19-1-108** is amended to read:

**19-1-108. Creation of Environmental Quality Restricted Account -- Purpose of restricted account -- Sources of funds -- Uses of funds.**

(1) There is created the Environmental Quality Restricted Account.

(2) The sources of monies for the restricted account are:

(a) radioactive waste disposal fees collected under Sections 19-3-106 and 19-3-106.4 and other fees collected under Subsection 19-3-104(5);

(b) hazardous waste disposal fees collected under Section 19-6-118;

(c) PCB waste disposal fees collected under Section 19-6-118.5;

(d) nonhazardous solid waste disposal fees collected under Section 19-6-119; and

(e) all investment income derived from money in the restricted account created in this section.

(3) In each fiscal year, the first \$500,000 collected from all waste disposal fees listed in Subsection (2), collectively, shall be deposited in the General Fund as free revenue. The balance shall be deposited in the restricted account created in this section.

(4) The Legislature may annually appropriate monies from the Environmental Quality Restricted Account to:

- (a) the department for the costs of administering radiation control programs;
- (b) the department for the costs of administering solid and hazardous waste programs; and
- (c) the Hazardous Substances Mitigation Fund, up to \$400,000, for purposes set forth in Title

19, Chapter 6, Part 3, Hazardous Substances Mitigation Act.

(5) In order to stabilize funding for the radiation control program and the solid and hazardous waste program, the Legislature shall in years of excess revenues reserve in the restricted account sufficient monies to meet departmental needs in years of projected shortages.

(6) The Legislature may not appropriate money from the General Fund to the department as a supplemental appropriation to cover the costs of the radiation control program and the solid and hazardous waste program in an amount exceeding 25% of the amount of waste disposal fees collected during the most recent prior fiscal year.

(7) The Legislature may annually appropriate not more than \$200,000 from this account to the Department of Public Safety, created in Section 53-1-103, to be used by that department solely for hazardous materials:

- (a) management training; and
- (b) response preparation and emergency response training.

(8) All funds appropriated under this part that are not expended at the end of the fiscal year lapse into the account created in Subsection (1).

(9) For fiscal year 1998-99, up to \$537,000 in the Environmental Quality Restricted Account may be appropriated by the Legislature to fund legislative priorities.

Section 2. Section 19-3-103 is amended to read:

**19-3-103. Radiation Control Board -- Members -- Organization -- Meetings -- Per diem and expenses.**

(1) The board created under Section 19-1-106 comprises ~~[44]~~ 13 members, one of whom shall be the executive director, or his designee, and the remainder of whom shall be appointed by the governor, with the advice and consent of the Senate.

(2) No more than ~~[five]~~ six appointed members shall be from the same political party.

(3) The appointed members shall be knowledgeable about radiation protection and shall be as follows:

(a) one physician;

(b) one dentist;

(c) one health physicist or other professional employed in the field of radiation safety;

(d) ~~[two]~~ three representatives of regulated industry, at least one of whom represents the radioactive waste management industry, and at least one of whom represents the uranium milling industry;

(e) one registrant or licensee representative from academia;

(f) one representative of a local health department;

(g) one elected county official; and

(h) ~~[two]~~ three members of the general public, at least one of whom represents organized environmental interests.

(4) (a) Except as required by Subsection (4)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(5) Each board member is eligible for reappointment to more than one term.

(6) Each board member shall continue in office until the expiration of his term and until a successor is appointed, but not more than 90 days after the expiration of his term.

(7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor, after considering recommendations by the department and with the consent of the Senate.

(8) The board shall annually elect a chair and vice chair from its members.

(9) The board shall meet at least quarterly. Other meetings may be called by the chair, by the executive secretary, or upon the request of three members of the board.

(10) Reasonable notice shall be given each member of the board prior to any meeting.

(11) ~~[Six]~~ Seven members constitute a quorum. The action of a majority of the members present is the action of the board.

(12) (a) (i) Members who are not government employees ~~[shall]~~ receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

Section 3. Section 19-3-104 is amended to read:

**19-3-104. Registration and licensing of radiation sources by department -- Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.**

(1) As used in this section:

(a) "Decommissioning" includes financial assurance.

(b) "Source material" and "byproduct material" have the same definitions as in 42 U.S.C.A. 2014, Atomic Energy Act of 1954, as amended.

~~[(4)]~~ (2) The board may require the registration or licensing of radiation sources that

constitute a significant health hazard.

~~[(2)]~~ (3) All sources of ionizing radiation, including ionizing radiation producing machines, shall be registered or licensed by the department.

~~[(3)]~~ (4) The board may make rules:

(a) necessary for controlling exposure to sources of radiation that constitute a significant health hazard;

(b) to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government; ~~[and]~~

(c) to establish:

(i) board accreditation requirements and procedures for mammography facilities; and

(ii) certification procedure and qualifications for persons who survey mammography equipment and oversee quality assurance practices at mammography facilities~~[-]; and~~

(d) as necessary regarding the possession, use, transfer, or delivery of source and byproduct material and the disposal of byproduct material to establish requirements for:

(i) the licensing, operation, decontamination, and decommissioning, including financial assurances; and

(ii) the reclamation of sites, structures, and equipment used in conjunction with the activities described in this Subsection (4).

(5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and byproduct material and the disposal of byproduct material at uranium mills or commercial waste facilities, as provided in this Subsection (5).

(b) On and after January 1, 2003 through March 30, 2003:

(i) \$6,667 per month for uranium mills or commercial sites disposing of or reprocessing byproduct material; and

(ii) \$4,167 per month for those uranium mills the executive secretary has determined are on standby status.

(c) On and after March 31, 2003 through June 30, 2003 the same fees as in Subsection (5)(b)

apply, but only if the federal Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation on or before March 30, 2003.

(d) If the Nuclear Regulatory Commission does not grant the amendment for state agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and are not required to be paid until on and after the later date of:

(i) October 1, 2003; or

(ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation.

(e) For the payment periods beginning on and after July 1, 2003, the department shall establish the fees required under Subsection (5)(a) under Section 63-38-3.2, subject to the restrictions

under Subsection (5)(d).

(f) The department shall deposit fees it receives under this Subsection (5) into the Environmental Quality Restricted Account created in Section 19-1-108.

[(4)] (6) (a) The department shall assess fees for registration, licensing, and inspection of radiation sources under this section.

(b) The department shall comply with the requirements of Section 63-38-3.2 in assessing fees for licensure and registration.

[(5)] (7) The department shall coordinate its activities with the Department of Health rules made under Section 26-21a-203.

[(6)] (8) (a) Except as provided in Subsection [(7)] (9), the board may not adopt rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to regulation of sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances.

(b) In adopting those rules, the board may incorporate corresponding federal regulations by reference.

[(7)] (9) (a) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection [(6)] (8) only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are

not adequate to protect public health and the environment of the state.

(b) Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

~~[(8)]~~ (10) (a) The board shall by rule:

(i) authorize independent qualified experts to conduct inspections required under this chapter of x-ray facilities registered with the division; and

(ii) establish qualifications and certification procedures necessary for independent experts to conduct these inspections.

(b) Independent experts under this Subsection ~~[(8)]~~ (10) are not considered employees or representatives of the division or the state when conducting the inspections.

~~[(9)]~~ (11) (a) The board may by rule establish criteria for siting commercial low-level radioactive waste treatment or disposal facilities.

(b) Any facility under Subsection (11)(a) for which a radioactive material license is required by this section shall comply with those criteria.

(c) A facility may not receive a radioactive material license until siting criteria have been established by the board. The criteria also apply to facilities that have applied for but not received a radioactive material license.

~~[(10)]~~ (12) The board shall by rule establish financial assurance requirements for closure and postclosure care of radioactive waste land disposal facilities, taking into account existing financial assurance requirements.



# Utah!

Where ideas connect

Department of Environmental Quality  
Division of Radiation Control

OCT 9 2002

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FILE

Michael O. Leavitt  
Governor  
Dianne R. Nielson, Ph.D.  
Executive Director  
William J. Sinclair  
Director

168 North 1950 West  
P.O. Box 144850  
Salt Lake City, Utah 84114-4850  
(801) 536-4250  
(801) 533-4097 Fax  
(801) 536-4414 T.D.D.  
www.deq.utah.gov

October 9, 2002

Dennis Sollenberger  
Office of State and Tribal Programs  
Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Via Federal Express

Dear Mr. Sollenberger:

As recently requested, enclosed is a packet of information concerning the uranium mills and mill tailings rulemakings just completed by the Division of Radiation Control. Enclosed are:

- (1). Summary of the rulemakings which show publication dates, public comment periods response to comments, effective dates, etc.
- (2). A copy of all final rulemakings, from the Utah Division of Administrative Rules website. As you are aware, some of the rulemakings were re-proposed in response to comments.
- (3). A copy of three responses by the Division to the various rulemakings including comment letters.

We are in the midst of preparation of the final application to be submitted to NRC. As a part of the final application, Utah will be submitting an alternate groundwater standard. We would appreciate any guidance that NRC could provide in a timely manner that will aid us in filing of the necessary documentation regarding this alternate standard. Since all necessary statutory changes and rulemakings have been completed, this information is needed so that the final application may be filed as soon as possible. Thank you for your cooperation.

Sincerely,

William J. Sinclair, Director



**Summary of Uranium Mills/Tailings Rulemakings as a result of SB96  
Division of Radiation Control - 2002**

<b>Rule</b>	<b>Approved by RCB for pc  Published in State Bulletin</b>	<b>Commence Public Comment Period</b>	<b>Public comment period ends or extended to</b>	<b>Written comments/ Response to comments</b>	<b>Final approval by RCB  Effective Date</b>
R313-22-33(1)(e)	4/5/2002 5/1/2002	5/1/2002	6/5/2002	No	6/7/2002 6/14/2002
R313-70-7(2)(b)(c)(d)	4/5/2002 5/1/2002	5/1/2002	6/5/2002	Yes 6/4/2002	
R313-17-2(1)(a)	4/5/2002 5/1/2002	5/1/2002	6/5/2002	Yes 6/4/2002	
R313-15-1001	4/23/2002 5/15/2002	5/15/2002	6/28/2002	No	7/22/2002 7/22/2002
R313-19-2	4/23/2002 5/15/2002	5/15/2002	6/28/2002	Yes 7/12/2002	
R313-22-39	4/5/2002 5/15/2002	5/15/2002	6/28/2002	No	7/22/2002 7/22/2002
R313-24	4/5/2002 5/1/2002	5/1/2002	6/28/2002	Yes 7/12/2002	

**Summary of Uranium Mills/Tailings Rulemakings as a result of SB96  
Division of Radiation Control - 2002**

<b>Rule</b>	<b>Approval by RCB  Re-published in State Bulletin</b>	<b>Commence Public Comment Period</b>	<b>Public comment period ends</b>	<b>Written comments/ Response to comments</b>	<b>Final approval by RCB  Effective Date</b>
R313-22-33(1)(e)	N/A	N/A	N/A	N/A	N/A
R313-70-7(2)(b)(c)(d)	6/7/2002 7/1/2002	7/1/2002	7/31/2002	No	9/6/2002 9/12/2002
R313-17-2(1)(a)	6/7/2002 7/1/2002	7/1/2002	7/31/2002	No	9/6/2002 9/12/2002
R313-15-1001	N/A	N/A	N/A	N/A	N/A
R313-19-2	7/22/2002 8/15/2002	8/15/2002	9/16/2002	No	10/4/02 10/7/02
R313-22-39	N/A	N/A	N/A	N/A	N/A
R313-24	7/22/2002 8/15/2002	8/15/2002	9/16/2002	Yes 9/20/2002	10/4/02 10/7/02

**DAR File No. 24716**

This filing was published in the 05/01/2002, issue, Vol. 2002, No.9, of the Utah State Bulletin.

[ [Bottom of Page](#) | [05/01/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) ]

**Environmental Quality, Radiation Control****R313-22-33****Specific Licenses****NOTICE OF PROPOSED RULE**

DAR File No.: 24716

Filed: 04/15/2002, 09:00

Received by: NL

**RULE ANALYSIS****Purpose of the rule or reason for the change:**

To maintain rules with are compatible with 10 CFR 40.

**Summary of the rule or change:**

To add a reference to Rule R313-24 at Subsection R313-22-33(1)(e). The license applicant must satisfy applicable special requirements in this rule for the issuance of a specific license.

**State statutory or constitutional authorization for this rule:**

Sections 19-3-104 and 19-3-108

**Anticipated cost or savings to:****the state budget:**

Since the rule change requires the license applicant satisfy applicable special requirements in R313-24 for the issuance of a specific license, there is no cost or savings impact on the State budget associated with this rule change.

**local governments:**

Since the rule change requires the license applicant satisfy applicable special requirements in R313-24 for the issuance of a specific license, there is no cost or savings impact on the local government associated with this rule change.

**other persons:**

Since the rule change requires the license applicant satisfy applicable special requirements in R313-24 for the issuance of a specific license, there is no cost or savings impact on other persons associated with this rule change.

**Compliance costs for affected persons:**

Since the rule change only requires the license applicant satisfy applicable special requirements in R313-24 for the issuance of a specific license, there is no compliance costs for affected persons associated with this rule change.

**Comments by the department head on the fiscal impact the rule may have on businesses:**

This rule change will have no fiscal impact on businesses.

**The full text of this rule may be inspected, during regular business hours, at the Division of Administrative Rules, or at:**

*Environmental Quality  
Radiation Control  
168 N 1950 W  
SALT LAKE CITY UT 84116-3085*

**Direct questions regarding this rule to:**

Susan Giddings at the above address, by phone at 801-536-4259, by FAX at 801-533-4097, or by Internet E-mail at sgidding@deq.state.ut.us

**Interested persons may present their views on this rule by submitting written comments to the address above no later than 5:00 p.m. on:**  
05/31/2002

**This rule may become effective on:**  
06/10/2002

**Authorized by:**  
William Sinclair, Director

**RULE TEXT**

**R313. Environmental Quality, Radiation Control.**

**R313-22. Specific Licenses.**

**R313-22-33. General Requirements for the Issuance of Specific Licenses.**

(1) A license application shall be approved if the Executive Secretary determines that:

(a) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these rules in a manner as to minimize danger to public health and safety or the environment;

(b) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or the environment;

(c) the applicant's facilities are permanently located in Utah, otherwise the applicant shall seek reciprocal recognition as required by Section R313-19-30;

(d) the issuance of the license will not be inimical to the health and safety of the public;

(e) the applicant satisfies applicable special requirements in Sections R313-22-50 and R313-22-75, and Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38; and

(f) in the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, or for the conduct of other activities which the Executive Secretary determines will significantly affect the quality of the environment, the Executive Secretary, before commencement of construction of the plant or facility in which the activity will be conducted, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. The Executive Secretary shall respond to the application within 60 days. Commencement of construction prior to a response and conclusion shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility. As used in this paragraph the term "commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

**KEY: specific licenses, decommissioning, broad scope, radioactive materials**

**[September 14, 2001]2002**

**Notice of Continuation October 10, 2001**

**19-3-104**

**19-3-108**

## **ADDITIONAL INFORMATION**

**PLEASE NOTE:**

- Text to be deleted is struck through and surrounded by brackets (e.g., [example]). Text to be added is underlined (e.g., example). Some browsers may not depict some or any of these attributes on the screen or when the document is printed.
- Please see the **DISCLAIMER** regarding information available from state web pages.

For questions regarding the *content* or *application* of this rule, please contact Susan Giddings at the above address, by phone at 801-536-4259, by FAX at 801-533-4097, or by Internet E-mail at [sgidding@deq.state.ut.us](mailto:sgidding@deq.state.ut.us)

For questions about the *rulemaking process*, please contact the **Division of Administrative Rules** (801-538-3764). *Please Note:* The Division of Administrative Rules is **NOT** able to answer questions about the content or application of these administrative rules.

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[ [Top of Page](#) | [05/01/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) | [DAS Home](#) ]

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Last modified: 05/01/2002 1:10 AM

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**DAR File No. 24759**

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[ [Bottom of Page](#) | [05/15/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) ]

## Environmental Quality, Radiation Control

# R313-15-1001

## Waste Disposal - General Requirements

### NOTICE OF PROPOSED RULE

DAR File No.: 24759

Filed: 04/25/2002, 08:45

Received by: NL

### RULE ANALYSIS

#### Purpose of the rule or reason for the change:

To maintain rules which are compatible with 10 CFR 40.

#### Summary of the rule or change:

The rule states that a licensee or registrant shall dispose of licensed material by transfer to an authorized recipient as provided in Rule R313-24 (as well as other rules and sections which are listed in Subsection R313-15-1001(1)(a)). Rule R313-24 has been added to Subsection R313-15-1001(1)(a).

#### State statutory or constitutional authorization for this rule:

Sections 19-3-104, and 19-3-108

#### Anticipated cost or savings to: the state budget:

Since the rule relates to the transfer of licensed material by licensees, there is no cost or savings impact with this rule change for the State budget.

#### local governments:

Since the rule relates to the transfer of licensed material by licensees, there is no cost or savings impact with this rule change for the local government.

#### other persons:

The rule states that a licensee or registrant shall dispose of licensed material by transfer to an authorized recipient as provided in Rule R313-24 (as well as other rules and sections which are listed in Subsection R313-15-1001(1)(a)). Since only Rule R313-24 has been added to Subsection R313-15-1001(1)(a) and it applies only to the licensees, there is no cost or savings impact with this rule change for other persons.

**Compliance costs for affected persons:**

Since the rule relates to the transfer of licensed material by licensees, there are no compliance costs for "affected persons: associated with this rule change.

**Comments by the department head on the fiscal impact the rule may have on businesses:**

There is no fiscal impact for businesses associated with this rule change.

**The full text of this rule may be inspected, during regular business hours, at the Division of Administrative Rules, or at:**

*Environmental Quality  
Radiation Control  
168 N 1950 W  
SALT LAKE CITY UT 84116-3085*

**Direct questions regarding this rule to:**

Susan Giddings at the above address, by phone at 801-536-4259, by FAX at 801-533-4097, or by Internet E-mail at [sgidding@deq.state.ut.us](mailto:sgidding@deq.state.ut.us)

**Interested persons may present their views on this rule by submitting written comments to the address above no later than 5:00 p.m. on:**

06/14/2002

**This rule may become effective on:**

06/17/2002

**Authorized by:**

William Sinclair, Director

**RULE TEXT**

**R313. Environmental Quality, Radiation Control.**

**R313-15. Standards for Protection Against Radiation.**

**R313-15-1001. Waste Disposal - General Requirements.**

(1) A licensee or registrant shall dispose of licensed or registered material only:



(a) By transfer to an authorized recipient as provided in Section R313-15-1006 or in Rules R313-21, R313-22, R313-24, or R313-25, or to the U.S. Department of Energy; or

(b) By decay in storage; or

(c) By release in effluents within the limits in Section R313-15-301; or

(d) As authorized pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, or R313-15-1005.

(2) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for:

(a) Treatment prior to disposal; or

(b) Treatment or disposal by incineration; or

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed pursuant to Rule R313-25; or

(e) Storage until transferred to a storage or disposal facility authorized to receive the waste.

**KEY: radioactive material, contamination, waste disposal, safety**

~~[November 9, 2001]~~2002

Notice of Continuation April 30, 1998

19-3-104

19-3-108

#### **ADDITIONAL INFORMATION**

##### **PLEASE NOTE:**

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- Please see the **DISCLAIMER** regarding information available from state web pages.

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For questions about the *rulemaking process*, please contact the **Division of Administrative Rules** (801-538-3764). *Please Note:* The Division of Administrative Rules is *NOT* able to answer questions about the content or application of these administrative rules.

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[ [Top of Page](#) | [05/15/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) | [DAS Home](#) ]

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Last modified: 05/15/2002 10:30 AM

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**DAR File No. 24757**

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[ [Bottom of Page](#) | [05/15/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) ]

**Environmental Quality, Radiation Control****R313-22-39****Executive Secretary Action on Applications to Renew or Amend****NOTICE OF PROPOSED RULE**

DAR File No.: 24757

Filed: 04/25/2002, 08:30

Received by: NL

**RULE ANALYSIS****Purpose of the rule or reason for the change:**

To maintain rules which are compatible with 10 CFR 40.

**Summary of the rule or change:**

Rule R313-24 has been added to Section R313-22-39. The rule states that the Executive Secretary will use the criteria set forth in Rule R313-24 (as well as other rules and subsections cited in the rule) when considering an application by a licensee to renew or amend a license.

**State statutory or constitutional authorization for this rule:**

Sections 19-3-104, and 19-3-108

**Anticipated cost or savings to:  
the state budget:**

Since the rule requires that the Executive Secretary use the criteria set forth in Rule R313-24 when considering an application by a licensee to renew or amend a license, there will be no costs or savings impact with this rule change for the State budget.

**local governments:**

Since the rule requires that the Executive Secretary use the criteria set forth in Rule R313-24 when considering an application by a licensee to renew or amend a license, the rule relates only to licensees and not to local government. There will be no costs or savings impact with this rule change to the local government budget.

**other persons:**

Since the rule requires that the Executive Secretary use the criteria set forth in Rule R313-24 when considering an application by a licensee to renew or amend a license, there will be no costs or savings impact with this rule change to "other persons".

**Compliance costs for affected persons:**

Since the rule change relates to licenses and not inspections, there will be no compliance costs for "affected persons" associated with this rule change.

**Comments by the department head on the fiscal impact the rule may have on businesses:**

The rule change will have no fiscal impact on businesses.

**The full text of this rule may be inspected, during regular business hours, at the Division of Administrative Rules, or at:**

*Environmental Quality  
Radiation Control  
168 N 1950 W  
SALT LAKE CITY UT 84116-3085*

**Direct questions regarding this rule to:**

Susan Giddings at the above address, by phone at 801-536-4259, by FAX at 801-533-4097, or by Internet E-mail at [sgidding@deq.state.ut.us](mailto:sgidding@deq.state.ut.us)

**Interested persons may present their views on this rule by submitting written comments to the address above no later than 5:00 p.m. on:**  
06/14/2002

**This rule may become effective on:**  
06/17/2002

**Authorized by:**

William Sinclair, Director

**RULE TEXT**

**R313. Environmental Quality, Radiation Control.**

**R313-22. Specific Licenses.**

**R313-22-39. Executive Secretary Action on Applications to Renew or Amend.**

In considering an application by a licensee to renew or amend the license, the Executive Secretary will use the criteria set forth in Sections R313-22-33, R313-22-50, and R313-22-75 and in Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38, as applicable.

**KEY:** specific licenses, decommissioning, broad scope, radioactive materials

~~[September 14, 2001]~~2002

Notice of Continuation October 10, 2001

19-3-104

19-3-108

#### ADDITIONAL INFORMATION

##### PLEASE NOTE:

- Text to be deleted is struck through and surrounded by brackets (e.g., ~~[example]~~). Text to be added is underlined (e.g., example). Some browsers may not depict some or any of these attributes on the screen or when the document is printed.
- Please see the **DISCLAIMER** regarding information available from state web pages.

For questions regarding the *content* or *application* of this rule, please contact Susan Giddings at the above address, by phone at 801-536-4259, by FAX at 801-533-4097, or by Internet E-mail at sgidding@deq.state.ut.us

For questions about the *rulemaking process*, please contact the **Division of Administrative Rules** (801-538-3764). *Please Note:* The Division of Administrative Rules is *NOT* able to answer questions about the content or application of these administrative rules.

[ [Top of Page](#) | [05/15/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) | [DAS Home](#) ]

Last modified: 05/15/2002 10:30 AM

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**DAR File No. 24969**

This filing was published in the 07/01/2002, issue, Vol. 2002, No.13, of the Utah State Bulletin.

[ [Bottom of Page](#) | [07/01/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) ]

**Environmental Quality, Radiation Control****R313-70-7****License Categories and Types of Fees for Radioactive Materials Licenses****NOTICE OF PROPOSED RULE**

DAR File No.: 24969

Filed: 06/14/2002, 10:06

Received by: NL

**RULE ANALYSIS****Purpose of the rule or reason for the change:**

To add new license categories and types of fees in Subsections R313-70-7(2)(b), and (c) reflecting the new rule, Rule R313-24, Uranium Mills, and Source Material Mill Tailings Disposal Facility Requirements and maintain rules which are compatible with 10 CFR 40. (DAR Note: Rule R313-24 was published in the May 15, 2002, issue of the Utah State Bulletin, beginning on page 23.)

**Summary of the rule or change:**

The rule change adds two license categories to Subsections R313-70-7(2)(b) and (c) as follows: in Subsection R313-70-7(2)(b), licenses for possession and use of source material in extraction facilities such as conventional milling, in situ leaching, heap leaching, and other processes including licenses authorizing the possession of byproduct (tailings and other wastes) from source material extraction facilities, as well as licenses authorizing the possession and maintenance of a facility in a standby mode and licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations; and in Subsection R313-70-7(2)(c), licenses that authorize the receipt of byproduct material, as defined in Section 19-3-102, from other persons for possession and disposal.

**State statutory or constitutional authorization for this rule:**

Sections 19-3-103.5, 19-3-104, and 19-3-108

**Anticipated cost or savings to:  
the state budget:**

Since there is a transfer of regulatory authority from federal to state government, there will be a savings impact through the collection of annual and review fees from licensees. The fees approved by the 2002 Utah legislature contained within the Department of Environmental Quality (DEQ) fee schedule set the amounts of fees from \$0 to \$80,000 year for closing, on standby, or operating facilities and a \$70/hour review fee. In comparison, the recently approved Nuclear Regulatory Commission (NRC) fees are approximately \$78,000 annual fee with a \$152/hour review fee. Licensees will realize savings from the hourly review fee difference. The fees have been set to collect actual state program costs.

**local governments:**

Local governments are not subject to the provisions of the rule, because no local governments in Utah have uranium recovery radioactive material licenses.

**other persons:**

There will be a cost impact associated with this rule change. Licensees will pay annual and review fees. Annual fees vary from \$0 to \$80,000 per year depending on if the facility is closing, on standby, or operating. An hourly review fee of \$70 per hour will be charged.

**Compliance costs for affected persons:**

There will be annual and review fees cost associated with this rule change. Fees are set by the legislature within the DEQ fee schedule and during the 2002 legislative session, annual fees from \$0 to \$80,000/year were set for closing, on standby, or operating facilities with an hourly review fee of \$70/hour. The fees were established to be paid on a monthly basis starting in January 2003 and legislation was crafted such as to avoid licensees from having to pay duplicative fees to the State and the NRC (except for 3 months of startup costs). For the first year, the fees were established through the passage of SB96 during the 2002 legislative session. (DAR Note: S.B. 96 is found at UT L 2002 Ch 297, and was effective May 6, 2002.)

**Comments by the department head on the fiscal impact the rule may have on businesses:**

There is an annual fee for business that possess radioactive material in license category R313-70-7(2)(b) or (c). There is a per hour review fee authorized in the DEQ fee schedule.

**The full text of this rule may be inspected, during regular business hours, at the Division of Administrative Rules, or at:**

*Environmental Quality  
Radiation Control  
168 N 1950 W  
SALT LAKE CITY UT 84116-3085*

**Direct questions regarding this rule to:**

Craig Jones at the above address, by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at [cjones@deq.state.ut.us](mailto:cjones@deq.state.ut.us)

**Interested persons may present their views on this rule by submitting written comments to the address above no later than 5:00 p.m. on:**

07/31/2002

This rule may become effective on:  
09/10/2002

Authorized by:  
William Sinclair, Director

**RULE TEXT****R313. Environmental Quality, Radiation Control.****R313-70. Payments, Categories and Types of Fees.****R313-70-7. License Categories and Types of Fees for Radioactive Materials Licenses.**

Fees shall be established in accordance with the Legislative Appropriations Act. Copies of established fee schedules may be obtained from the Executive Secretary.

**TABLE**

LICENSE CATEGORY	TYPE OF FEE
(1) Special Nuclear Material	
(a) Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers and neutron generators.	New License or Renewal Annual Fee



(b) Licenses for New License or Renewal  
possession and use Annual Fee  
of less than 15 g  
special nuclear  
material in  
unsealed form for  
research and  
development.

(c) All other New License or Renewal  
special nuclear Annual Fee  
material licenses.

(d) Special New License or Renewal  
nuclear material Annual Fee  
to be used as  
calibration and  
reference sources.

(2) Source  
Material.

(a) Licenses for New License or Renewal  
concentrations Annual Fee  
of uranium from  
other areas like  
copper or phosphates  
for the production  
of moist, solid,  
uranium yellow  
cake.

(b) Licenses for Annual Fee  
possession and use  
of source material  
in ~~[recovery operations]~~  
extraction facilities  
such as ~~[milling, in situ~~  
~~leaching, heap leaching,~~

~~ore buying stations, and~~  
~~ion exchange facilities,~~  
~~and in processing of ores~~  
~~containing source material~~  
~~for extraction of metals~~  
~~other than uranium or~~  
~~thorium,]conventional milling,~~  
~~in-situ leaching, heap leaching,~~  
~~and other processes~~ including  
licenses authorizing the possession  
of byproduct [~~waste-~~]material  
(tailings and other wastes) from source material  
[~~recovery operations~~]extraction facilities, as  
well as licenses authorizing  
the possession and maintenance  
of a facility in a  
standby mode[~~-~~], and  
[~~(c) Licenses that~~ ~~Annual Fee~~  
~~authorize the receipt of~~  
~~byproduct material, as~~  
~~defined in Section~~  
~~19-3-102, from other~~  
~~persons for possession~~  
~~and disposal.~~  
(d) ~~(b)~~ licenses that      [~~Annual Fee~~]  
authorize the receipt  
of byproduct material,  
as defined in Section  
19-3-102, from other  
persons for possession and  
disposal incidental to the  
disposal of the uranium waste  
tailings generated by the  
licensee's milling

operations.

(c) Licenses that Annual Fee  
authorize the receipt of  
byproduct material, as  
defined in Section  
19-3-102, from other  
persons for possession  
and disposal.

<del>(+e)</del> (d) Licenses for	New License or Renewal
possession and use of	Annual Fee
source material for	
shielding.	

<del>(+f)</del> (e) All other	New License or Renewal
source material	Annual Fee
licenses.	

(3) Radioactive  
 Material Other  
 than Source  
 Material and  
 Special Nuclear  
 Material.

(a)(i) Licenses of	New License or Renewal
broad scope for	Annual Fee
possession and use of	
radioactive material	
for processing or	
manufacturing of	
items containing	
radioactive	
material for	
commercial	
distribution.	

(a)(ii) Other	New License or Renewal
licenses for	Annual Fee

possession and use of  
radioactive material  
for processing or  
manufacturing of items  
containing radioactive  
material for commercial  
distribution.

(b) Licenses	New License or Renewal
authorizing the	Annual Fee
processing or	
manufacturing and	
distribution or	
redistribution of	
radio-	
pharmaceuticals,	
generators, reagent	
kits, or sources or	
devices containing	
radioactive material.	

(c) Licenses	New License or Renewal
authorizing	Annual Fee
distribution or	
redistribution of	
radiopharmaceuticals,	
generators, reagent	
kits, or sources or	
devices not	
involving	
processing of	
radioactive	
material.	

(d) Licenses for	New License or Renewal
possession and	Annual Fee
use of radioactive	

material for  
industrial  
radiography  
operations.

(e) Licenses for	New License or Renewal
possession and use	Annual Fee
of sealed sources	
for irradiation	
of materials	
in which	
the source is not	
removed from its	
shield (self-	
shielded units).	

(f)(i) Licenses for	New License or Renewal
possession and use	Annual Fee
of less than	
10,000 curies of	
radioactive	
material in sealed	
sources for	
irradiation of	
materials in which	
the source	
is exposed for	
irradiation purposes.	

(f)(ii) Licenses	New License or Renewal
for possession	Annual Fee
and use of 10,000	
curies or more	
of radioactive	
material in sealed	
sources for	
irradiation	

of materials in  
which the source  
is exposed  
for irradiation  
purposes.

(g) Licenses to  
distribute items  
containing  
radioactive  
material that  
require device  
review to persons  
exempt from the  
licensing  
requirements of  
R313-19, except  
specific licenses  
authorizing  
redistribution of  
items that have  
have been authorized  
for distribution to  
persons exempt from  
the licensing  
requirements of  
R313-19.

New License or Renewal  
Annual Fee

(h) Licenses to  
distribute items  
containing  
radioactive  
material or  
quantities of  
radioactive material  
that do not require

New License or Renewal  
Annual Fee

device evaluation to  
persons exempt  
from the licensing  
requirements of  
R313-19, except  
for specific licenses  
authorizing  
redistribution of  
items that have been  
authorized for  
distribution to  
persons exempt from  
the licensing  
requirements of  
R313-19.

(i) Licenses to  
distribute items  
containing radio-  
active material  
that require sealed  
source or device  
review to persons  
generally licensed  
under R313-21, except  
specific licenses  
authorizing  
redistribution of  
items that have been  
authorized for  
distribution to  
persons generally  
licensed under  
R313-21.

New License or Renewal  
Annual Fee

(j) Licenses to

New License or Renewal

distribute	Annual Fee
items containing	
radioactive material	
or quantities of	
radioactive material	
that do not require	
sealed source or	
device review to	
persons generally	
licensed under	
R313-21, except	
specific licenses	
authorizing	
redistribution of	
items that have been	
authorized for	
distribution to	
persons generally	
licensed under	
R313-21.	
(k) Licenses for	New License or Renewal
possession and use	Annual Fee
of radioactive	
material for	
research and	
development,	
which do not	
authorize commercial	
distribution.	
(l) All other	New License or Renewal
specific radioactive	Annual Fee
material licenses.	
(m) Licenses of	New License or Renewal
broad scope for	



possession and use of  
radioactive material  
for research and  
development  
which do  
not authorize  
commercial  
distribution.

(n) Licenses that	New License or Renewal
authorize services	Annual Fee
for other licensees,	
except licenses that	
authorize leak	
testing or waste	
disposal services	
which are subject to	
the fees specified	
for the listed	
services.	

(o) Licenses that	New License or Renewal
authorize	Annual Fee
services for	
leak testing only.	

(4) Radioactive  
Waste Disposal:

(a) Licenses	Application Fee
specifically	New License or Renewal
authorizing the	
receipt of	
waste radioactive	
material from other	
persons for the	
purpose of	
commercial disposal	

by land by the  
licensee.

(b) Licenses                      New License or Renewal  
specifically                      Annual Fee  
authorizing the  
receipt of waste  
radioactive material  
from other persons  
for the purpose of  
packaging or  
repackaging the  
material. The  
licensee will  
dispose of the  
material by  
transfer to  
another person  
authorized to  
receive or  
dispose of the  
material.

(c) Licenses                      New License or Renewal  
specifically                      Annual Fee  
authorizing the  
receipt of  
prepackaged waste  
radioactive  
material from  
other persons.  
The licensee will  
dispose of the  
material by  
transfer to  
another person

authorized to  
receive or dispose  
of the material.

(d) Licenses	New License or Renewal
authorizing	Annual Fee
packaging of	
radioactive waste	
for shipment	
to waste disposal	
site where licensee	
does not take	
possession of	
waste material.	

(5) Well logging,  
well surveys and  
tracer studies.

(a) Licenses for	New License or Renewal
possession	Annual Fee
and use of	
radioactive material	
for well logging,	
well surveys and	
tracer studies other	
than field flooding	
tracer studies.	

(b) Licenses for	New License or Renewal
possession and use of	Annual Fee
radioactive material	
for field flooding	
tracer studies.	

(6) Nuclear  
laundries.

(a) Licenses for	New License or Renewal
commercial	Annual Fee

collection and  
laundry of items  
contaminated with  
radioactive  
material.

(7) Human use of  
radioactive  
material.

(a) Licenses for human use of radioactive material in sealed sources contained in teletherapy devices.	New License or Renewal Annual Fee
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(b) Other licenses issued for human use of radioactive material, except licenses for use of radioactive material contained in teletherapy devices.	New License or Renewal Annual Fee
--	--------------------------------------

(c) Licenses of broad scope issued to medical institutions or two or more physicians authorizing research and development, including human use of radioactive	New License or Renewal Annual Fee
---	--------------------------------------

material, except  
licenses for radio-  
active material in  
sealed sources  
contained in  
teletherapy devices.

(8) Civil Defense.

(a) Licenses for	New License or Renewal
possession and use	Annual Fee
of radioactive	
material for civil	
defense activities.	

(9) Power Source.

(a) Licenses for	New License or Renewal
the manufacture and	Annual Fee
distribution of	
encapsulated	
radioactive	
material wherein	
the decay energy	
of the material is	
used as a source	
for power.	

(10) General  
License.

(a) Measuring,	Fee per registration certificate
gauging and	
control devices as	
described in	
R313-21-22(4),	
other than	
hydrogen-3 (tritium)	
devices and	
polonium-210	

devices containing  
no more than 10  
millicuries used  
for producing light  
or an ionized  
atmosphere.

(b) In Vitro testing	Fee per registration certificate
(c) Depleted uranium	Fee per registration certificate
(d) Reciprocal recognition, as provided for in R313-19-30, of a license issued by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State.	Annual fee for license category listed in R313-70-7(1) through (10), per 180 days in one calendar year

**KEY: radioactive materials, x-rays, registration, fees**

~~[August 13, 1999]~~2002

Notice of Continuation October 10, 2001

19-3-104~~(4)~~(6)

#### ADDITIONAL INFORMATION PLEASE NOTE:

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- Please see the **DISCLAIMER** regarding information available from state web pages.

For questions regarding the *content* or *application* of this rule, please contact Craig Jones at the above address, by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at [cjones@deq.state.ut.us](mailto:cjones@deq.state.ut.us)

For questions about the *rulemaking process*, please contact the **Division of Administrative Rules** (801-538-3764). *Please Note:* The Division of Administrative Rules is *NOT* able to answer questions about the content or application of these administrative rules.

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[ [Top of Page](#) | [07/01/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) | [DAS Home](#) ]

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**DAR File No. 24715**

This filing was published in the 07/01/2002, issue, Vol. 2002, No.13, of the Utah State Bulletin.

[ [Bottom of Page](#) | [07/01/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) ]

## Environmental Quality, Radiation Control

# R313-17-2

## Public Notice and Public Comment Period

### NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 24715

Filed: 06/14/2002, 09:55

Received by: NL

### RULE ANALYSIS

#### Purpose of the rule or reason for the change:

To maintain rules which are compatible with 10 CFR 40.

#### Summary of the rule or change:

To add two license categories to Subsection R313-17-2(1)(a). Subsection R313-17-2(1)(a) states that the Executive Secretary will give public notice and an opportunity to comment on proposed licensing actions for these license categories. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 1, 2002, issue of the Utah State Bulletin, on page 9. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

#### State statutory or constitutional authorization for this rule:

Sections 19-3-103.5, 19-3-104, and 19-3-108

#### Anticipated cost or savings to: the state budget:

Since this rule change requires only public notice and the opportunity to comment on proposed licensing actions associated with identified license categories, there is no cost or savings impact for the State budget.

#### local governments:



Since the rule requires only public notice and an opportunity to comment on licensing actions associated with identified license categories, there is no cost or savings impact to the local Government.

**other persons:**

Since the rule requires only public notice and an opportunity to comment on licensing actions associated with identified license categories, there is no cost or savings impact to other persons.

**Compliance costs for affected persons:**

Since the rule change only relates to public notice and an opportunity to comment on proposed licensing actions and not inspections, there is no compliance costs for affected persons associated with this rule change.

**Comments by the department head on the fiscal impact the rule may have on businesses:**

The rule change will have no fiscal impact on businesses.

**The full text of this rule may be inspected, during regular business hours, at the Division of Administrative Rules, or at:**

*Environmental Quality  
Radiation Control  
168 N 1950 W  
SALT LAKE CITY UT 84116-3085*

**Direct questions regarding this rule to:**

Craig Jones at the above address, by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at [cjones@deq.state.ut.us](mailto:cjones@deq.state.ut.us)

**Interested persons may present their views on this rule by submitting written comments to the address above no later than 5:00 p.m. on:**  
07/31/2002

**This rule may become effective on:**  
09/10/2002

**Authorized by:**  
William Sinclair, Director

**RULE TEXT**

**R313. Environmental Quality, Radiation.**

**R313-17. Administrative Procedures.**

**R313-17-2. Public Notice and Public Comment Period.**

(1) The Executive Secretary shall give public notice of, and an opportunity to comment on the following actions:

(a) Proposed licensing action for license categories 2b[+] and c, [~~and d,~~] 4a, b, c, d and 6 identified in R313-70-7 or a proposed approval or denial of a significant radioactive materials license, license amendment, or license renewal.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to use in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Executive Secretary to take public comment on those proposed activities.

(2) Public notice shall allow at least 30 days for public comment.

(3) Public notice may describe more than one action listed in R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

(4) Public notice shall be given by publication in a newspaper of general circulation in the area affected by the proposed action. Notice shall also be given to persons on a mailing list developed by the Executive Secretary and those who request in writing to be notified.

**KEY: administrative procedures, public comment, public hearings, orders**

**2002**

**Notice of Continuation July 23, 2001**

**19-3-103.5**

**19-3-104**

**ADDITIONAL INFORMATION**

**PLEASE NOTE:**

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- Please see the **DISCLAIMER** regarding information available from state web pages.

For questions regarding the *content* or *application* of this rule, please contact Craig Jones at the above address, by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at [cjones@deq.state.ut.us](mailto:cjones@deq.state.ut.us)

For questions about the *rulemaking process*, please contact the **Division of Administrative Rules** (801-538-3764). *Please Note:* The Division of Administrative Rules is *NOT* able to answer questions about the content or application of these administrative rules.

[ [Top of Page](#) | [07/01/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) | [DAS Home](#) ]

Last modified: 07/01/2002 2:33 AM

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**DAR File No. 24758**

This filing was published in the 08/15/2002, issue, Vol. 2002, No.16, of the Utah State Bulletin.

[ [Bottom of Page](#) | [08/15/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) ]

**Environmental Quality, Radiation Control****R313-19-2****Requirements of General Applicability to Licensing of Radioactive Material****NOTICE OF CHANGE IN PROPOSED RULE**

DAR File No.: 24758

Filed: 07/25/2002, 09:40

Received by: NL

**RULE ANALYSIS****Purpose of the rule or reason for the change:**

The division received public comments that require substantive change to the original rule.

**Summary of the rule or change:**

A wording change was suggested to ensure consistency with the Section R313-12-3 definitions for source material milling and byproduct material, definition (b) to make it clear which materials are covered using the specific terms as defined in the Utah Radiation Control rules. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 15, 2002, issue of the Utah State Bulletin, on page 22. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**State statutory or constitutional authorization for this rule:**

Sections 19-3-104 and 19-3-108

**Anticipated cost or savings to:  
the state budget:**

Since there is a transfer of regulatory authority from federal to state government, there will be a savings impact through the collection of annual and review fees from licensees. The fees approved by the 2002 legislature contained within the Department of Environmental Quality (DEQ) fee schedule set the amounts of fees from \$0 to \$80,000 per year for closing, on standby, or operating facilities and a \$70 per hour review fee. In comparison, the recently approved Nuclear Regulatory Commission (NRC) fees are approximately \$78,000 annual fee with a \$152 per hour review fee. Licensees will realize savings from the hourly review fee difference. The fees have been set to collect annual state program costs.

**local governments:**

Local governments are not subject to provisions of this rule, because no local governments in Utah have uranium recovery material licensees.

**other persons:**

There will be a cost impact associated with this rule change. Licensees will pay annual and review fees. Annual fees vary from \$0 to \$80,000 per year depending if the facility is closing, on standby, or operating. An hourly review fee of \$70 per hour will be charged.

**Compliance costs for affected persons:**

There will be annual and review fee costs associated with this rule change. Fees are set by the legislature within the DEQ fee schedule and during the 2002 legislative session, annual fees from \$0 to \$80,000 per year were set for closing, on standby, and operating facilities with an hourly review fee of \$70 per hour. The fees were established to pay on a monthly basis starting in January 2003 and legislation was crafted such to avoid licensees from having to pay duplicative fees to the State and to the NRC (except for 3 months of startup costs). For the first year, the fees were established through passage of S.B. 96 during the 2002 legislative session. S.B. 96 is found at UT L 2002 Ch 297, and was effective May 6, 2002.

**Comments by the department head on the fiscal impact the rule may have on businesses:**

This is an annual fee for businesses that possess radioactive material in license category Subsections R313-70-7(2)(b) or (c). There is a per hour review fee authorized in the DEQ fee schedule.

**The full text of this rule may be inspected, during regular business hours, at the Division of Administrative Rules, or at:**

*Environmental Quality  
Radiation Control  
168 N 1950 W  
SALT LAKE CITY UT 84116-3085*

**Direct questions regarding this rule to:**

William Sinclair at the above address, by phone at 801-536-4250, by FAX at 801-533-4097, or by Internet E-mail at [bsinclair@utah.gov](mailto:bsinclair@utah.gov)

Interested persons may present their views on this rule by submitting written comments to the address above no later than 5:00 p.m. on:

09/16/2002

**This rule may become effective on:**  
10/11/2002

**Authorized by:**  
William Sinclair, Director

## **RULE TEXT**

### **R313. Environmental Quality, Radiation Control.**

#### **R313-19. Requirements of General Applicability to Licensing of Radioactive Material.**

##### **R313-19-2. General.**

(1) A person shall not receive, possess, use, transfer, own or acquire radioactive material except as authorized in a specific or general license issued pursuant to Rules R313-21 or R313-22 or as otherwise provided in Rule R313-19.

(2) In addition to the requirements of Rules R313-19, R313-21 or R313-22, all licensees are subject to the requirements of Rules R313-12, R313-15, and R313-18. Licensees authorized to use sealed sources containing radioactive materials in panoramic irradiators with dry or wet storage of radioactive sealed sources, underwater irradiators, or irradiators with high dose rates from radioactive sealed sources are subject to the requirements of Rule R313-34, licensees engaged in industrial radiographic operations are subject to the requirements of Rule R313-36, licensees using radionuclides in the healing arts are subject to the requirements of Rule R313-32, licensees engaged in land disposal of radioactive material are subject to the requirements of Rule R313-25, and licensees engaged in wireline and subsurface tracer studies are subject to the requirements of Rule R313-38. Licensees engaged in ~~uranium mill recovery~~ source material milling operations, authorized to possess byproduct ~~waste~~ material, as defined in Section R313-12-3 (see definition (b)) ~~[(tailings)]~~ from source material ~~recovery~~ milling operations, authorized to possess and maintain a source material milling facility in standby mode, authorized to receive byproduct material from other persons for disposal, or authorized to possess and dispose of ~~source~~ byproduct material ~~waste tailings~~ generated by source material milling operations are subject to the requirements of Rule R313-24.

**KEY: license, reciprocity, transportation, exemptions**

**2002**

**Notice of Continuation October 10, 2001**

**19-3-104**

19-3-108

**ADDITIONAL INFORMATION****PLEASE NOTE:**

- Text to be deleted is struck through and surrounded by brackets (e.g., [example]). Text to be added is underlined (e.g., example). Some browsers may not depict some or any of these attributes on the screen or when the document is printed.
- Please see the **DISCLAIMER** regarding information available from state web pages.

For questions regarding the *content* or *application* of this rule, please contact William Sinclair at the above address, by phone at 801-536-4250, by FAX at 801-533-4097, or by Internet E-mail at [bsinclair@utah.gov](mailto:bsinclair@utah.gov)

For questions about the *rulemaking process*, please contact the **Division of Administrative Rules** (801-538-3764). *Please Note:* The Division of Administrative Rules is *NOT* able to answer questions about the content or application of these administrative rules.

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[ [Top of Page](#) | [08/15/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) | [DAS Home](#) ]

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**DAR File No. 24738**

This filing was published in the 08/15/2002, issue, Vol. 2002, No.16, of the Utah State Bulletin.

[ [Bottom of Page](#) | [08/15/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) ]

## Environmental Quality, Radiation Control

# R313-24

## Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements

### NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 24738

Filed: 07/23/2002, 03:16

Received by: NL

### RULE ANALYSIS

#### Purpose of the rule or reason for the change:

Received public comments that require substantive changes to the original proposed rule.

#### Summary of the rule or change:

This change is in response to comments offered by the Nuclear Regulatory Commission (NRC) during the public comment period. Changes made are those suggested by NRC to ensure that this rule is compatible (equivalent) with federal rules. Many of the changes are clarifications to or modifications of the original rule language as suggested by the NRC. NRC also recommended that a reference be added to ensure that the Executive Secretary provides a written analysis of any environmental report and this was accomplished by adding Subsection R313-24-3(3). It distinguishes where it is appropriate for the NRC (under the Commission) to continue jurisdiction and where it is appropriate for the State (under the Executive Secretary) to assume authority. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the May 15, 2002, issue of the Utah State Bulletin, on page 23. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

#### State statutory or constitutional authorization for this rule:

Sections 19-3-104 and 19-3-108

#### Anticipated cost or savings to: the state budget:



Since there is a transfer of regulatory authority from federal to state government, there will be a savings impact through the collection of annual and review fees from licensees. The fees approved by the 2002 legislature contained within the Department of Environmental Quality (DEQ) fee schedule set the amounts of fees from \$0 to \$80,000 year for closing, on standby, or operating facilities and a \$70/hour review fee. In comparison, the recently approved NRC fees are approximately \$78,000 annual fee with a \$152/hour review fee. Licensees will realize savings from the hourly review fee difference. The fees have been set to collect annual state program costs.

**local governments:**

Local governments are not subject to provisions of this rule, because no local governments in Utah have uranium recovery radioactive material licenses.

**other persons:**

There will be a cost impact associated with this rule change. Licensees will pay annual and review fees. Annual fees vary from \$0 to \$80,000 per year depending if the facility is closing, on standby, or operating. An hourly review fee of \$70 per hour will be charged.

**Compliance costs for affected persons:**

There will annual and review fees costs associated with this rule change. Fees are set by the legislature within the DEQ fee schedule and during the 2002 legislative session, annual fees from \$0 to \$80,000/year were set for closing, on standby, or operating facilities with an hourly review fee of \$70/hour. The fees were established to be paid on a monthly basis starting in January 2003 and legislation was crafted such as to avoid licensees from having to pay duplicative fees to the State and to the NRC (except for 3 months of startup costs). For the first year, the fees were established through passage of S.B. 96 during the 2002 legislative session. S.B. 96 is found at UT L 2002 Ch 297, and was effective May 6, 2002.

**Comments by the department head on the fiscal impact the rule may have on businesses:**

This is an annual fee for businesses that possess radioactive material in the license category under Subsections R313-70-7(2)(b) or (c). There is a per hour review fee authorized in the DEQ fee schedule.

**The full text of this rule may be inspected, during regular business hours, at the Division of Administrative Rules, or at:**

*Environmental Quality  
Radiation Control  
168 N 1950 W  
SALT LAKE CITY UT 84116-3085*

**Direct questions regarding this rule to:**

William Sinclair at the above address, by phone at 801-536-4250, by FAX at 801-533-4097, or by Internet E-mail at [bsinclair@utah.gov](mailto:bsinclair@utah.gov)

Interested persons may present their views on this rule by submitting written comments to the address above no later than 5:00 p.m. on:

09/16/2002

This rule may become effective on:  
10/11/2002

Authorized by:  
William Sinclair, Director

## RULE TEXT

### R313. Environmental Quality, Radiation Control.

#### R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.

##### R313-24-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements for possession and use of source material ~~[in recovery]~~ milling operations such as conventional milling, in-situ leaching, or heap-leaching ~~[and ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium]~~. The rule includes requirements for the possession of byproduct ~~[waste material (tailings)]~~ material, as defined in Section R313-12-3 (see "byproduct material" definition (b)), from source material ~~[recovery]~~ milling operations, as well as, possession and maintenance of a facility in standby mode. In addition, requirements are prescribed for the receipt of byproduct material ~~[as defined in Section 19-3-102;]~~ from other persons for possession and disposal. The rule also prescribes requirements for receipt of byproduct material ~~[as defined in Section 19-3-102;]~~ from other persons for possession and disposal incidental to the ~~[uranium waste milline]~~ byproduct material generated by the licensee's source material milling operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-24 are in addition to, and not substitution for, the other applicable requirements of ~~[these rules]~~ Title R313. In particular, the provisions of Rules R313-12, R313-15, R313-18, R313-19, R313-21, R313-22, and R313-70 apply to applicants and licensees subject to Rule R313-24.

##### R313-24-2. Scope.

(1) The requirements in Rule R313-24 apply to ~~[uranium mills, uranium mill tailings, and]~~ source material milling operations, byproduct material, and byproduct material disposal facilities.

**R313-24-3. Environmental Analysis.**

(1) Each new license application, renewal, or major amendment shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. The environmental report shall present a discussion of the following:

(a) An assessment of the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment;

(b) An assessment of any impact on waterways and groundwater resulting from the activities conducted pursuant to the license or amendment;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to the license or amendment; and

(d) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment.

(2) Commencement of construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.

(3) The Executive Secretary shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2.

**R313-24-4. Clarifications or Exceptions.**

For the purposes of Rule R313-24, 10 CFR 40.2a through 40.4; 40.12; 40.20(a); 40.21; 40.26(a) through (c); 40.31(h); 40.41(c); the introduction to 40.42(k) and 40.42(k)(3)(i); 40.61 (a) and (b); 40.65; and Appendix A to Part 40(2002) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion and substitution of the following:

(a) Exclude 10 CFR 40.26(c)(1) and replace with "(1) The provisions of Sections R313-12-51, R313-12-52, R313-12-53, R313-19-34, R313-19-50, R313-19-61, R313-24-1, Rules R313-14, R313-15, R313-18, and R313-24 (incorporating 10 CFR 40.2a, 40.3, 40.4, and 40.26 by reference)"; ~~and~~

(b) In Appendix A to 10 CFR 40, exclude Criterion 5B(1) through 5H, Criterion 7A, Criterion 13, and replace the excluded Criterion with "Utah Administrative Code, R317-6, Ground Water Quality Protection[-]"; and

(c) In Appendix A to 10 CFR 40, exclude Criterion 11A through 11F and Criterion 12;

(2) The substitution of the following:

(a) ~~"[Board] 10 CFR 40"~~ for reference to ~~"[Commission]"~~ in the definition of ~~"compliance period,"~~ in paragraph four of the introduction to Appendix A, and in Criterion 5A(3) of Appendix A] this part as found throughout the incorporated text;

(b) ~~"Executive Secretary"~~ for reference to ~~"Commission"~~ in the first and fourth references contained in 10 CFR 40.2a, in 10 CFR 40.3, 40.20(a), 40.26, 40.41(c), 40.61, and 40.65[~~in the definition of "closure plan,"~~ in paragraph five of the introduction to Appendix A, in Criterion 6(2), 6(4), 6(6), 6A(2), 6A(3), 9, 10, 11A through 11E, and 12 of Appendix A;

(c) ~~"10 CFR 40"~~ for reference to ~~"this part"~~];

(d)

(e) ~~"Rules R313-19, R313-21, or R313-22"~~ for ~~"Section 62 of the Act"~~ as found in 10 CFR 40.12(a);

(f) ~~"Rules R313-21 or R313-22"~~ for reference to ~~"the regulations in this part"~~ in 10 CFR 40.41(c);

(g) ~~"Section R313-19-100"~~ for reference to ~~"part 71 of this chapter"~~];

(h) ~~"Executive Secretary"~~ for reference to ~~"appropriate NRC regional office as indicated in Appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555,"~~ or for reference to ~~"appropriate NRC Regional Office shown in Appendix D to 10 CFR part 20 of this chapter, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555"~~ or for reference to ~~"appropriate NRC regional office as indicated in Criterion 8A";~~

(i) ~~as found in 10 CFR 40.41(c);~~

(j) In 10 CFR 40.42(k)(3)(i), ~~"R313-15-401 through R313-15-406"~~ for reference to ~~"10 CFR part 20, subpart E";~~

(k) ~~"[uranium] source material milling"~~ for reference to ~~"uranium milling, in production of uranium hexafluoride, or in a uranium enrichment facility"~~];

(l) ~~"Utah Administrative Code, Rule R317-6, Ground Water Quality Protection"~~ as found in 10 CFR 40.65(a);

(m) ~~"Executive Secretary"~~ for reference to ~~"[Environmental Protection Agency in 40 CFR part 192, subparts D and E]"~~ or ~~"Environmental Protection Agency in 40 CFR part 192, subparts D and E (48 FR 45926, October 7, 1983)";~~

(n) ~~appropriate NRC Regional Office shown in Appendix D to 10 CFR part 20 of this chapter, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555,"~~ as stated in 10 CFR 65(a)(1);

(l) "require the licensee to" for reference to "require to" in 10 CFR 40.65(a)(1); and

((f)) In Appendix A to 10 CFR part 40, the following substitutions:

(i) "R313-12-3" for reference to "Sec. 20.1003 of this chapter";

((ii)) as found in the first paragraph of the introduction to Appendix A;

(ii) "Utah Administrative Code, Rule R317-6, Ground Water Quality Protection" for ground water standards in "Environmental Protection Agency in 40 CFR part 192, subparts D and E" as found in the Introduction, paragraph 4; or "Environmental Protection Agency in 40 CFR part 192, subparts D and E (48 FR 45926; October 7, 1983)" as found in Criterion 5;

(iii) "Board" for reference to "Commission" in the definition of "compliance period," in paragraph five of the introduction and in Criterion 5A(3);

(iv) "Executive Secretary" for reference to "Commission" in the definition of "closure plan," in paragraph five of the introduction, and in Criteria 6(2), 6(4), 6(6), 6A(2), 6A(3), 9, and 10 of Appendix A;

(v) "license issued by the Executive Secretary" for reference to "Commission license" in the definition of "licensed site," in the introduction to Appendix A;

((iii)vi) "Executive Secretary" for reference to "NRC" in Criterion 4((f))D;

((iv)vi) "representatives of the Executive Secretary" for reference to "NRC staff" in Criterion 6(6);

((v)vi) "Executive Secretary-approved" for reference to "Commission-approved" in Criterion 6(a)A(1) and Criterion 9;

(ix) "Executive Secretary" for reference to "appropriate NRC regional office as indicated in Criterion 8A" as found, Criterion 8, paragraph 2 or for reference to "appropriate NRC regional office as indicated in Appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in Criterion 8A; and

((vi)x) "Executive Secretary" for reference to "the Commission or the State regulatory agency" and

((vii) "general or specific" for the reference to "NRC general or specific." in Criterion 9, paragraph 2.

**KEY: environmental analysis, uranium mills, tailings, monitoring**

**2002**

19-3-104

19-3-108

**ADDITIONAL INFORMATION****PLEASE NOTE:**

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For questions about the *rulemaking process*, please contact the **Division of Administrative Rules** (801-538-3764). *Please Note:* The Division of Administrative Rules is *NOT* able to answer questions about the *content* or *application* of these administrative rules.

[ [Top of Page](#) | [08/15/2002 Bulletin Table of Contents](#) | [Bulletin Page](#) | [Rules Home](#) | [DAS Home](#) ]

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**Response to Comments received during public comment  
period on Rules R313-17-2(1)(a), R313-22-33(1)(e), and  
R313-70-7(b)(c)(d)(e)(f)**

**Division of Radiation Control  
June 4, 2002**

**Response to Comments received during public comment period on Rules  
R313-17-2(1)(a), R313-22-33(1)(e), and R313-70-7(b)(c)(d)(e)(f)**

David R. Bird, Parsons, Behle, and Latimer (for International Uranium Corporation)

1. We understand the Division considers the mechanics for transition from an NRC license to a State issued license to be a process matter and not appropriate for rule making. You have indicated it is the Division's intent to make the transition a simple paper exercise without a new hearing or public comment under the proposed R313-17-2. The State will convert the NRC license to a State license with the same dates (including expiration and renewal dates), terms, conditions without the need for the licensee to file any additional material. As discussed during the stakeholder process we believe that this is the best approach.

Response: The Executive Secretary concurs with the comments. No rulemaking change is needed.

2. The new license categories proposed in R313-70-7 (2) (b),(c), & (d) seem to cover the type of uranium milling and mill tailings activities that will require licensing. We note that the Utah Code Ann. 19-3-104 (5) as enacted by SB 96 establishes the fees that are to be charged during the transition period. During discussions at the stakeholder meetings and this spring as SB96 was drafted, the Division asserted its belief it could administer the program at a reduced cost to the licensees. As IUC's current NRC license encompasses both new categories 2 (b) and (d), the fee structure must be apportioned to insure IUC does not pay double fees because it fits into two categories.

Response: The original rulemaking categories have been revised to combine (b) and (d) into one category at the request of the NRC and also to address the issue of duplicate fees as posed by Mr. Bird. This will require a reproposal of the rulemaking with the changes made for another 30-day public comment period. The commentor may again access whether the change(s) address the concerns raised.

3. We concur that the Public Notice and Public Comment provisions of R313-17-2, which treat the new license categories like other significant radioactive materials licenses, are appropriate.

Response: The Executive Secretary concurs with the comments. Due to the changes to R313-70-7 (2) (b),(c), & (d) which combine categories (b) and (d) into a single category, this rulemaking will be repropose which will be subject to another 30-day public comment period.

Josephine M. Piccone, Deputy Director, Office of State and Tribal Programs, Nuclear Regulatory Commission

4. The fee category of (2)(b) mixes licenses covered under UMTRCA and those not covered under UMTRCA. This would not normally concern NRC except that these license categories are



used elsewhere in the regulations that are specific to uranium milling and 11e.(2) byproduct material requirements. We recommend that separate categories be used for licenses subject to UMTRCA (uranium mills, including in situ and heap leach, 11e.(2) disposal sites) and other source material not subject to UMTRCA (rare earth, ore buying stations, secondary extraction[IX]). Changes in license category may change the references in R313-17-2.

Response: We concur with the NRC comments. As a result, the categories have been revised as suggested and the rulemaking is being repropose which will be subject to another 30-day public comment period.

Sarah M. Fields, Moab Utah

5. R313-17-2 should include a provision that the public notice be noticed in the Utah Bulletin and posted on the DRC web page under a specific section designated for the posting of public notices, providing an opportunity for public comment, hearings, or requests for administrative hearing.

Response: This is beyond the scope of the rulemaking for R313-17-2 which only added license categories that require public notice and/or hearing. The provisions of public notice for rulemakings occur at meetings of the Utah Radiation Control Board. All rulemaking are brought before the Board to obtain approval for a rulemaking to go forward to be filed with the Division of Administrative Rules which requires each Agency to hold a 30-day public comment period. Agendas and minutes for all Board meetings are available on the DRC website. The rulemaking has to come back before the Board following the close of a comment period for final approval which is also part of the notice found in the Board agenda and part of Board minutes. Once a rule is filed by the Agency it is published in the Utah State Bulletin and available electronically.

For the uranium mill rulemaking, as a result of Ms. Fields' comments, the proposed rules were made available on the DRC website. The Executive Secretary will examine the process of public notice from a public availability standpoint and make any necessary changes to the process. However, no changes in terms of the rulemaking will be made as a result of this comment.

5. R313 should clearly differentiate between a notice for comment and public hearing and a notice that would provide an opportunity for an adjudicatory hearing upon the request of a petitioner. and

6. The public noticing provisions of R313-17-2 should cover both types of hearings

Response: This is beyond the scope of the rulemaking for R313-17-2 which only added license categories that require public notice and/or hearing. For licensing action in the categories described in R313-17, there are specific requirements for notice and hearings. Once a licensing action is concluded and the Executive Secretary has made a final decision, a petitioner has 30 days to file for administrative hearing. Final licensing actions for the categories described in

R313-17-2 (which require public notice/hearing) are brought before the Utah Radiation Control Board as an information item at the next available meeting following a final decision. Depending on the public interest, a press release may announce that a final decision has occurred. A petitioner has responsibility to follow the licensing process to the final decision point and then request a hearing if deemed necessary following the procedures outlined in R313-17. The current process has worked satisfactorily for a number of years and no change in rulemaking is required to public notice the opportunity for an administrative hearing.

7. R313-17-2 should clearly state what kind of information should appear in a public notice. For example, a notice should indicate a knowledgeable contact person, state how pertinent information can be obtained from the DRC, or at the DRC, DEQ, or State of Utah web sites, etc.

Response: This is beyond the scope of the rulemaking for R313-17-2 which only added license categories that require public notice and/or hearing. DRC is given and appreciates the latitude it has in preparing public notices and the content of such notices. DRC is not in favor of a prescriptive process. DRC routinely sends all public notices "of all types" so that one public notice does not fit all circumstances. Once again, this is a process issue. Typical public notices do provide the information stated in comment #7. We will examine the public notice process and determine if the public notices can be better written to address some of the issues of the commentor. A change to the rule is not necessary in this case.

The Division of Radiation Control also received a letter from Ms. Sarah Fields on May 20, 2002 concerning rulemaking which is in a separate administrative rulemaking process at this time (R313-24). Ms. Fields requested an extension to the public comment period on the new rule, R313-24. A similar request was received via electronic mail from Mr. Bill Love of Moab. As a result of these requests, the public comment period on four rules filed on May 15, 2002 (which included R313-24) was extended to June 28, 2002. Also in the interest of providing opportunity for additional comment, the comment period was also extended on three rules to June 5, 2002. The extension for the public comment period was noticed in The Salt Lake Tribune, the Deseret News, the Moab Times-Independent, and the Blue Mountain Panorama (Blanding).

Ms. Fields also brought up many process questions which were addressed in a letter to Ms. Fields of May 24, 2002 which is included as part of this rulemaking packet. A copy of the letter to Mr. Love notifying him of the extension of May 24, 2002 is also included in this packet. Also attached are letters from Mr. David Bird, Josephine Piccone, and Ms. Sarah Fields which address issues relating to the rulemaking at hand: R313-17-2(1)(a), R313-22-33(1)(e), and R313-70-7(b)(c)(d)(e)(f)



A PROFESSIONAL  
LAW CORPORATION

201 South Main Street  
Suite 1600  
Salt Lake City, Utah  
84111-2218  
Post Office Box 15880  
Salt Lake City, Utah  
84145-0880  
Telephone 801 532-1234  
Facsimile 801 536-6111  
E-Mail: pbl@pb.utah.com

James B. Lee  
Gordon L. Roberts  
P. Robert Reeder  
J. Gordon Hunsaker  
Lawrence E. Stevens  
Daniel M. Aldred  
Della W. Janssen  
W. Jeffrey Pillmore  
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David S. Ramsey, Of Counsel \*\*\*  
Mark A. Glick, Of Counsel  
Michael W. Devore, Of Counsel  
Robert Christensen, Of Counsel  
Bryan B. Todd, Of Counsel

\* Admitted only in West Virginia  
\*\* Admitted only in New York & Louisiana  
\*\*\* Admitted only in California

May 30, 2002

VIA FAX 801-533-4097  
AND US MAIL

William Sinclair, Director  
Division of Radiation Control  
Department of Environmental Quality  
168 North 1950 West  
Salt Lake City, UT 84116-3085

Re: Comments to Proposed Rules: R313-17-2 (1)(a); R313-22-33 (e); and  
R313-70-7 (2)(b), (c), and (d).

Dear Bill:

Parsons Behle & Latimer is filing these comments on behalf of its client International Uranium (USA) Corporation ("IUC"), owner of the White Mesa Mill in Blanding, Utah.

We are commenting today generally on the process and specifically on the above listed proposed rules. IUC will be filing subsequent comments on the remaining proposed rules before the June 14<sup>th</sup> deadline.

The Division is to be commended for following the spirit of its agreement with stakeholders and the statutory requirements of Utah Code Ann. §§ 19-3-104(8) & (9) which provide that for the purpose of assuming Nuclear Regulatory Commission ("NRC") responsibilities the Board may adopt rules more stringent than corresponding federal regulations only if it makes a written finding, after public comment and hearing, and based on evidence in the record, that the corresponding federal regulations are not adequate to protect public health and the environment.

William Sinclair, Director  
May 30, 2002  
Page Two

IUC believes that the NRC program is technically and scientifically sufficient to protect public health and the environment. However, it looks forward to the opportunity to work with the State of Utah and regulators attuned to the issues of the State and its citizens.

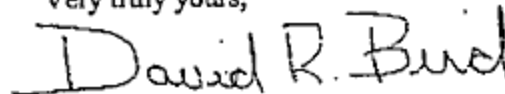
We understand the Division considers the mechanics for transition from an NRC license to a State issued license to be a process matter and not appropriate for rule making. You have indicated it is the Division's intent to make the transition a simple paper exercise without a new hearing or public comment period under proposed R313-17-2. The State will convert the NRC license to a State license with the same dates (including expiration and renewal dates), terms and conditions without the need for the licensee to file any additional material. As discussed during the stakeholder process we believe that this is the best approach.

The new license categories proposed in R313-70-7 (2)(b), (c) & (d) seem to cover the types of uranium milling and mill tailings activities that will require licensing. We note that Utah Code Ann. § 19-3-104 (5) as enacted by SB 96, establishes the fees that are to be charged during the transition period. During discussions at the stakeholder meetings and, this spring as SB 96 was drafted, the Division asserted its belief it could administer the program at a reduced cost to the licensees. As IUC's current NRC license encompasses both new categories 2(b) and (d), the fee structure must be apportioned to insure IUC does not pay double fees because it fits into two categories.

We concur that the Public Notice and Public Comment provisions of R313-17-2, which treat the new license categories like other significant radioactive materials licenses, are appropriate.

IUC appreciates the efforts the State is making in working toward an amended Agreement State Status and the opportunity to comment on these proposed rules.

Very truly yours,



David R. Bird

DRB/ml

Cc: Ron Hochstein  
David Frydenlund, Esq.  
Anthony Thompson, Esq.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

P.02/03

May 28, 2002

Mr. William J. Sinclair, Director  
Division of Radiation Control  
Department of Environmental Quality  
168 North 1950 West  
P.O. Box 144850  
Salt Lake City, UT 84114-4850

Dear Mr. Sinclair:

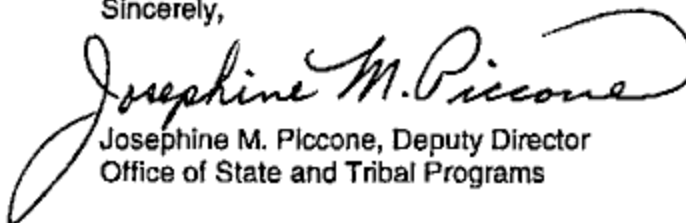
We have reviewed the draft Utah regulations R313-17-2, "Public Notice and Public Comment Period," R313-22-33, "Generic Requirements for the Issuance of Specific Licenses," and R313-70-7, "License Categories and Types of Fees for Radioactive Materials Licenses" which were sent to us by e-mail dated April 16, 2002. The regulations were reviewed to ensure that the requirements in the Uranium Mill Tailings Radiation Control Act (UMTRCA) are adequately addressed by the Utah regulations. There is no direct NRC regulatory section that could be used for comparison.

As a result of the NRC review, we have one comment regarding the category of licenses in R313-70-7 (see enclosure). Amendment of the Utah regulations is needed to avoid confusion on which licensees are subject to the requirements in UMTRCA. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that a State regulation meets the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final State regulation. However, we have determined that if your proposed regulations were adopted incorporating the comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (OSTP) Procedure SA-200.

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in STP Procedure SA-201, Review of State Regulations (November 10, 1998), please highlight the final changes and send one copy in a computer readable format, if possible. The State Regulation Status (SRS) Data Sheet will be updated when we have completed the review of the other regulations to implement the amended Agreement for uranium milling and management of 11e.(2) byproduct material.

If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me or Dennis Sollenberger of my staff at 301-415-2819 or DMS4@nrc.gov.

Sincerely,

  
Josephine M. Piccone, Deputy Director  
Office of State and Tribal Programs

Enclosure:  
As stated

COMMENTS ON DRAFT UTAH REGULATIONS  
AGAINST COMPATIBILITY AND HEALTH AND SAFETY CATEGORIES

State Regulation or SSR	NRC Regulation or SSR	RATS ID	Category	Subject and Comments
R313-70-7		NA	NA	<p>Fee Category</p> <p>The fee category of (2)(b) mixes licenses covered under UMTRCA and with those not covered under UMTRCA. This would not normally concern NRC except that these license categories are used elsewhere in the regulations that are specific to uranium milling and 11e.(2) byproduct material requirements.</p> <p>We recommend that separate categories be used for licenses subject to UMTRCA (uranium mills including in situ and heap leach, 11e.(2) disposal sites) and other source material not subject to UMTRCA (rare earth, ore buying stations, secondary extraction [IX]). Changes in license category may change the references in R313-17-2.</p>

**From:** "Sarah M. Fields" <smfields@moci.net>  
**To:** Bill Sinclair <BSINCLAI.EQRAD.EQDOMAIN@deq.state.ut.us>  
**Date:** 6/4/02 5:34PM  
**Subject:** Comments on R313-17-2

Dear Mr. Sinclair,

Attached are comments on R313-17-2. Hard copy will follow in the mail.

Thank you for extending the comment periods. More extensive comments on the proposed rules noticed on May 15 will be transmitted at a later time.

Thank you also for providing me with all that information and putting information on the DRC web page.

I apologize that some of the information that I asked you about was actually there on your web site. I am sorry to say that I was not as familiar with your web page as I should have been and had not really looked around enough. Web sites often have nooks and crannies. Now I am more familiar with the information you have on your web site and know where to go to find things.

Sincerely,

Sarah Fields

June 4, 2002

Mr. William J. Sinclair  
Division of Radiation Control  
Department of Environmental Quality  
168 North 1950 West  
P.O. Box 144850  
Salt Lake City, Utah 84114-4850  
bsinclair@deq.state.ut.us

Re: Comments on Proposed Rule R313-17-2

R313-17-2 should include a provision that the public notice be noticed in the Utah Bulletin and posted on the DRC web page under a specific section designated for the posting of public notices providing an opportunity for public comment, hearings, or requests for adjudicatory hearing.

R313-17-2 should clearly differentiate between a notice for comment and public hearing and a notice that would provide an opportunity for an adjudicatory hearing upon the request of a petitioner.

The public noticing provisions of R313-17-2 should cover both types of hearings.

R313-17-2 should clearly state what kind of information should appear in a public notice. For example, a notice should indicate a knowledgeable contact person, state how pertinent information can be obtained from the DRC or at the DRC, DEQ, or State of Utah web sites, etc.

Sincerely,

Sarah M. Fields  
P.O. Box 143  
Moab, Utah 84532





**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**DIVISION OF RADIATION CONTROL**

**Response to Comments regarding rulemaking R313-15-1001, "Waste Disposal - General requirements;" Requirements of General Applicability to Licensing of Radioactive Material - General;" R313-22-39; "Executive Secretary Action on Applications to Renew or Amend;" and R313-24, "Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements"**

**JULY 2002**

**Comments from the Nuclear Regulatory Commission, Office of State and Tribal Programs, Josephine Piccone**

**Reference: R313-24-3**

1. The State must perform an analysis of the information and have it available prior to the hearings on the licensing action. We recommend that a new subsection be added to require written analysis be available prior to any hearing on the licensing action. This must be added for compatibility.

Response: A new subsection (3) has been added that states: " The Executive Secretary shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2."

**Reference: R313-24-4(1)(b)**

2. The incorporation of the Utah groundwater standards instead of the 10 CFR Part 40, App. A Criteria will be addressed separately and must be resolved to be compatible.

Response: We understand the incorporation of the Utah groundwater standards will need to be addressed by an additional process other than rulemaking. The process will require that an NRC hearing be held and the Utah groundwater regulations be approved as an appropriate alternative standard for the protection of public health, safety, and the environment. The Executive Secretary will finalize the rulemaking which addresses the groundwater standards and address the separate process with the NRC. The Executive Secretary has committed to provide the NRC staff with an in-depth comparison of the groundwater standards in 10 CFR Part 40, Appendix A and R317-6. This comparison should also satisfy the requirements under the Radiation Control Act Section 104(8) and (9) to determine the equivalency of R317-6 with Appendix A. This information will be available as NRC determines the administrative process for determination of an "alternate standard."

**Reference: R313-24-4(1)**

3. Utah does not include Appendix A, Criteria 11A.through 11F. which are responsibilities reserved to the NRC in 10 CFR 150.15a(b). These criteria may be in the Utah regulations if referenced as items reserved for NRC affecting Utah licensees. Possible wording for such an exclusion: (c) In Appendix A to 10 CFR Part 40, exclude Criteria 11 and 12. Utah licensees should be aware of the requirements in these sections so that they can comply with the NRC requirements prior to termination of their license." This must be changed for compatibility.

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. All changes to R313-24 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking will be repropose with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The

Radiation Control Board can give final approval to R313-24 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Reference: R313-24-4(2)(j)**

4. The substitution of R317-6 for 40 CFR 192 standards is not appropriate since the EPA standards cover a broader spectrum of standards than the groundwater protection covered in R317-6. Utah may want to substitute the R317-6 for the groundwater standards in 40 CFR 192. This must be changed for compatibility.

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. All changes to R313-24 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking will be repropose with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The Radiation Control Board can give final approval to R313-24 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Reference: R313-24-4(2)(l)(vii)**

5. This substitution needs to be deleted. The proposed substitution is to a section that is reserved to NRC (see comment above as it applies to Criteria 11A-F and 12). This must be changed for compatibility.

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. All changes to R313-24 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking will be repropose with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The Radiation Control Board can give final approval to R313-24 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Reference: R313-19-2**

6. We suggest that the wording be changed to be consistent with the R313-12-3 definitions for source material milling and byproduct material(b) as follows:

"Licensees engaged in source material milling [operations], authorized to possess byproduct(b) material (tailings and other wastes)]from source material milling [operations], authorized to possess and maintain a source material milling facility in standby mode, authorized to received byproduct(b) material from other persons for disposal, or authorized to possess and dispose of byproduct(b) material generated by source material milling [operations] are subject to the requirements of R313-24." This wording would make it clear which materials are covered using the specific terms as defined in the Utah regulations.

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. The change to R313-19-2 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking for R313-19-2 will be repropose with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The Radiation Control Board can give final approval to R313-19-2 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Reference: R313-24-1(1)**

7. We suggest that the wording be changed to be consistent with the R313-12-3 definitions for source material milling and byproduct(b) material.

Paragraph (1) should read: "The purpose of this rule is to prescribe requirements for possession and use of source material in source material milling [operations] such as conventional milling, in situ leaching, or heap leaching. The rule includes requirements for the possession of byproduct(b) material as defined in R313-12-3 [(tailings and other wastes)] from source material milling [operations] as well as, requirements are prescribed for the receipt of byproduct(b) material from other persons for possession and disposal incidental to the byproduct(b) material generated by the licensee's source material milling operations."

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. All changes to R313-24 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking will be repropose with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The Radiation Control Board can give final approval to R313-24 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Reference: R313-24-2**

8. To use terms consistently, this section should read: "The requirements in Rule R313-24 apply to source material milling, byproduct(b) material, and byproduct(b) disposal facilities.

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. All changes to R313-24 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking will be repropose with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The Radiation Control Board can give final approval to R313-24 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Reference: R313-24-4**

9. The incorporation of 40.42(k)(3)(i) without the initial paragraph in 40.42(k) appears out of context and may be confusing to licensees. We suggest adding the introductory paragraph also.

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. All changes to R313-24 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking will be repropose with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The Radiation Control Board can give final approval to R313-24 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Reference: R313-24-4(2)(i)**

10. As commented above, the Utah terms should be used in the Utah regulations. Substitute "source material milling" for the first "uranium milling." It is not clear which section on 10 CFR Part 40 is being referred to in this substitution (40.65 is assumed). Please clarify by adding a reference to the specific section where the substitution is made.

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. All changes to R313-24 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking will be repropose with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The Radiation Control Board can give final approval to R313-24 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Reference: R313-24-1(l)(i)**

11. Please clarify in Appendix A the substitution is being made. You may want to add the phrase "in the first paragraph of the introduction to Appendix A."

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. All changes to R313-24 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking will be repropose with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The Radiation Control Board can give final approval to R313-24 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Reference: R313-24-1(1)(ii)**

12. Please clarify in Appendix A the substitution is being made. You may want to add the phrase "in the definition of licensed site in Appendix A."

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. All changes to R313-24 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking will be repropounded with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The Radiation Control Board can give final approval to R313-24 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Reference: R313-24-4(2)(i)(vi)**

13. Please clarify in Appendix A the substitution is being made. You may want to add the phrase "in Criterion 9."

Response: We concur with the NRC comment and will modify the rulemaking language as recommended. All changes to R313-24 as a result of public comment for this initial rulemaking will be accomplished. The rulemaking will be repropounded with a public comment period commencing on August 15, 2002 and ending September 16, 2002. The Radiation Control Board can give final approval to R313-24 at the October 4, 2002 meeting depending upon stakeholder comments and the need to further address any substantive comments.

**Comments from the law offices of Anthony J. Thompson on behalf of International Uranium Corporation**

**Reference: Proposed Rule R313-24, *Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements*:**

14. R313-24-4(1)(b) calls for the replacement of 10 C.F.R. Part 40, Appendix A, Criteria 5B(1) through 5H, 7A, and 13, with Utah Administrative Code R317-6 entitled Groundwater Quality Protection. On this, IUC would like to make several comments.

DEQ's substitution of its groundwater quality regulations for NRC's regulatory program appears to fit the provisions of Section 274(o) of the Atomic Energy Act of 1954, as amended by UMTRCA, allowing an Agreement State under Section 83 to propose alternatives to the regulatory program promulgated by NRC to protect public health, safety, and the environment. IUC notes that, while DEQ may propose regulations in this manner, no regulations falling under these statutory provisions may be finalized or become effective until an NRC hearing is held and such regulations are approved as an appropriate alternative for the protection of public health, safety, and the environment.

Response: See response to comment #2, page 2. In addition, it places the State in a Catch-22 situation. The State must finalize rulemaking prior to submitting its final application for an amended Agreement to the NRC yet it is suggested that statutory provisions prohibit such regulations from becoming final or effective until a hearing is held and such regulations are approved as an appropriate alternative. It is prudent to

finalize the rulemaking, submit the final amended application, and allow the NRC process, including any determination of an alternate standard, to move forward.

15. EQ defines "pollutant" to include any radioactive materials discharged into "waters of the state." Under its NRC-approved groundwater monitoring program, IUC's "point of compliance" ("POC") is at the down gradient edge of the White Mesa Mill's tailings cells in the perched aquifer so that any potential release of radiological or hazardous constituents from the tailings cells into the perched groundwater zone may be detected and remediated. IUC understands that under R317-6-6.9, the Executive Secretary has the discretion to determine where the compliance monitoring point shall be after taking into account the site-specific characteristics of a given site. Please confirm that DEQ will adopt the NRC POC as the State's compliance monitoring point for the White Mesa Mill.

Response: A multiple set of factors are used (defined in R317-6-6.9) which are used to determine the appropriate number and location of the point of compliance (POC) wells. This is established during the groundwater discharge permit process in which International Uranium is currently engaged. DRC will consider all previous work accomplished under the NRC-approved groundwater monitoring program but must factor in changes to site specific conditions (e.g., mounding of groundwater effecting direction of groundwater flow). This issue seems appropriate for discussion during any determination relating to an alternate standard under the NRC process.

16. DEQ's discussion of Alternate Concentration Limits ("ACL") in R317-6-6(6.4) states that an ACL will be allowed for facilities with Class III groundwater if steps are being taken to correct the source of the contamination, including a program and timetable for completion, the "pollution" causes *no* threat to human health and the environment, and the ACL is justified based on *substantial overriding social and economic benefits*. First, NRC's Part 40, Criterion 5B(6) states that an ACL may be established if the constituent at issue will not pose a *substantial present or potential hazard to human health or the environment* as long as the ACL is not exceeded. IUC believes that the imposition of a requirement that a pollutant pose *no* threat whatsoever may force licensees to engage in groundwater corrective action that may be too rigorous in light of the potential risk and, in some cases, impossible to achieve. Additionally, a component of DEQ's requirements for ACLs is that it is justified by *substantial overriding social and economic benefits*. An ACL is designed to preserve the quality of groundwater at a site when it can be demonstrated that it is not economically feasible, is impossible or unnecessary to remediate such groundwater to levels of higher quality because the ACL will protect against any significant threat to human health and the environment. This conflict with NRC's requirement for ACLs is significant and should be addressed prior to promulgating any final rule. In many cases, ACLs which are adequately protective of human health and the environment may be the only way sites will be able to fulfill license termination requirements. Thus, to avoid boxing DEQ and licensees into intractable problems in the future, the issue should be addressed now.

Response: DRC agrees with the commentor's characterization of an ACL which is described as "An ACL is designed to preserve the quality of the groundwater at a site

when it can be demonstrated that it is not economically feasible, is impossible, or unnecessary to remediate such groundwater to levels of higher quality because the ACL will protect against any significant threat to human health and the environment." In terms of the applicability of "substantial overriding social and economic benefits", such is limited in terms of it must be a case by case determination by the Utah Water Quality Board.

17. Additionally, there does not appear to be any explanation of the State ACL mechanism. As DEQ is well-aware, NRC has implemented guidance for ACLs which makes it plain how the ACL will function. NRC's ACLs involve a POC and point of exposure ("POE"). DEQ's rules identify a compliance monitoring point which assures protection of public health and the environment at the point of public exposure will be acceptable under DEQ rules but the mechanism is not clear.

Response: The mechanism is simpler than the guidance prepared by the NRC. The staff reviews the information provided by the licensee and in concert with the Executive Secretary makes a recommendation to the Water Quality Board who concurs with, modifies, or rejects the recommendation.

18. In its August 26, 2002 paper entitled *Elements of a Utah Agreement State Program for Uranium Mills Regulation, Divisions of Radiation Control and Water Quality, Utah Department of Environmental Quality*, DEQ stated that "[t]he State of Utah will clarify during rulemaking that there is no distinction between pre and post-1978 uranium and thorium mill tailings and wastes that would otherwise satisfy the definition of 11e.(2) byproduct material."

IUC requests that DEQ provide a citation to the applicable regulation where this will be addressed or a description of when and how this issue will be handled in the future.

Response: After some discussion following the "Elements" paper, it was determined that DRC would not make the pre and post-1978 uranium and thorium mill tailings and waste a rulemaking issue because anything "more stringent" than the current NRC regulatory framework would be judged not to be compatible. Therefore, this one issue could derail the entire rulemaking on compatibility grounds. DRC still maintains its ability to regulate pre-1978 material under certain conditions using its NORM (naturally occurring radioactive material) authority.

#### Comments from Sarah M. Fields, P.O. Box 143, Moab, Utah

##### **Reference: R313-24**

19. The Division of Radiation Control (DRC) should have provided more extensive explanation of the proposed rule. If this were a proposed federal regulation, the notice of the proposed rule would include extensive 'statements of consideration,' which would provide the public with further background information and would explicated and justify



the various sections of the proposed rule. Such explication and justification is missing from the proposed rule.

Response: As part of a final application package to the NRC to amend Utah's current Agreement to regulate uranium mills and tailings, Utah must develop equivalent rules to the NRC. The Division was given the statutory authority to promulgate rules during the 2002 Legislative Session. Seven rules have to be modified to develop the equivalent rules. Six of the rules require only minor changes to current rules such as to add a reference to the new R313-24 or add new licensing categories relating to uranium mills and tailings. R313-24 incorporates applicable parts of 10 CFR Part 40 by reference. The process has followed State of Utah rulemaking requirements which require certain filings that provide "statements of consideration" such as purpose of the rule or reason for a change to a rule, summary of the rule or change, aggregated anticipated cost or saving to the state budget, local government, and other persons, compliance costs for affected persons, fiscal impact on businesses, whether the rule or change is authorized or mandated by state law and indications of how public comment is to be received.

In regards to R313-24 which incorporates applicable parts of 10 CFR Part 40 by reference, the positives and negatives of 10 CFR Part 40 have been extensively discussed over the years since its promulgation at the federal level. The Division is also bound by statutory language in 19-3-104(8)(a) which states:

"Except as provided in Subsection 9 (which details a process for adopting more stringent rules), for the purposes of the state assuming responsibilities from the United States Nuclear Regulatory Commission, with respect to sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances"

The Division has chosen to adopt the appropriate federal regulations (10 CFR Part 40) by reference except for groundwater authority. This is consistent with recent adoption of other NRC promulgated regulations and is consistent with state policy in this regard. In addition, NRC has indicated in a letter of June 28, 2002 that "However, we have determined that if your proposed regulations were adopted incorporating the comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure SA-200." This confirms that the Division has properly pursued the rulemaking process to allow the eventual decision regarding granting of an amended Agreement by the NRC.

**Reference: R313-24-3. Environmental Analysis.**

20. At R313-24-3(1), the DRC should explain what is meant by "major amendment" to a license. The DRC should provide clarification regarding what types of amendments to uranium recovery or byproduct disposal site licenses will require environmental reports.

Response: The term "major amendment" is defined in a Division of Radiation Control written policy of November 24, 1993 which states:

"Major amendments to the license require public notice. These amendments are necessary to enable the licensee to respond in a timely manner to common variations in the types and quantities of waste, technological enhancements, changes necessary to comply with new rules, and changes that substantially alter the facility or its operation."

This definition is consistent with the requirements of 40 CFR 270.42 (RCRA permit modification rules).

21. At R313-24-3-1, the DRC should state that environmental reports should include assessment of hazards related to the transportation of materials to and from the facility.

Response: R313-24-3-1(a) requires the licensee in the environmental report to assess the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment. This is broadly written and would include transportation concerns.

22. At R33-24-3-1, the DRC should state that the environmental report should include an assessment of the cumulative effects of the proposed action when considered with other similar actions. There should not be an attempt by the licensee to segment licensing actions so that an environmental report might not be required, or that the cumulative effects of a number of segmented licensing actions are never considered.

Response: See comment to #20, this is broadly written as mentioned above. In the event of a major license amendment, renewal, or new license application, an environmental report will be required.

23. R313-24-3 does not, but should, provide an opportunity for the public to comment on a draft environmental report.

Response: This has been addressed in comment #1, page 2.

24. R313-24-3 does not explain how the DRC will use the environmental report in making decisions regarding a proposed licensing action. There does not seem to be any provision for the issuance by the DRC of a document equivalent to an Environmental Impact Statement or an Environmental Assessment that are developed pursuant to the National Environmental Protection Act (NEPA). The DRC should have a provision for the development of documents equivalent to the federal NEPA documents.

Response: The Division of Radiation Control and the State of Utah do not have a statute similar to NEPA. The Division will have the licensee produce the environmental report in situations described in response to comment #21, Division staff will evaluate the report and provide comment and basis within the safety evaluation report, which will be subject to public notice and comment.

**Reference: R313-24-4. Clarifications or Exceptions.**

25. Although there is, apparently a reason, I am dismayed that the proposed rule only refers to certain applicable sections of the U.S. Nuclear Regulatory Commission (NRC) regulations at 10 C.F.R. Part 40 that are to be incorporated into R313-24. R313-24 does not take the applicable parts of Part 40 (as clarified) and turn them into specific sections of R313-24, elimination any reference to Part 40. It is a mistake not to do this and I am surprised that the Office of Tribal and State Programs would permit this. It will cause confusion to the Public, industry, the DRC, and the State Attorney General when there is a need to cite or quote a particular regulation that is only incorporated by reference into the DRC regulations. The DRC is improperly cutting corners. The State of Colorado, a NRC Agreement State, has incorporated all the applicable sections of Part 40 into the state's code of regulations as specific sections of their state regulations.

Response: The Division has followed all applicable state rulemaking procedures, which allows adoption of federal regulations by reference. The Office of State and Tribal Programs (OSTP) has exhaustively reviewed the Utah proposed regulations and has offered constructive comments. This is a responsibility that OSTP has as states apply for agreements or amended agreements. NRC has indicated in a letter of June 28, 2002 that "However, we have determined that if your proposed regulations were adopted incorporating the comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure SA-200." This confirms that the Division has properly pursued the rulemaking process to allow the eventual decision regarding granting of an amended Agreement by the NRC. The public comment process allows parties described above (citizens, industry, Attorney General) to fully review and help identify and eliminate confusion.

26. The proposed rule does not explain what the DRC will rely upon to interpret NRC regulations. The proposed rule gives no information regarding how exactly the DRC intends to implement the NRC regulations. There is no mention of the use of DRC or NRC guidances that would be relied upon by the DRC, industry, and the public.

Response: The procedures that the Division will use have been described in the draft application submitted to the NRC on November 19, 2001.

27. The DRC should recognize the fact that the Part 40 regulations completely failed to assure that the uranium mill at Moab, Utah, was properly regulated, decontaminated, and decommissioned. Contrary to Part 40 regulations, no adequate surety was in place when Atlas went bankrupt. The surety was for \$ 6.5 million, where it will take over 20 times that amount to cap the tailing in place and remediate the groundwater-- all now at taxpayer expense. Of particular importance is the fact that the regulations did not assure that the balance of site at the former Atlas facility was not contaminated by the operation of the mill. The NRC completely failed to regulate the on-site contamination outside of the tailings impoundment. Therefore, the DRC should pay particular attention to activities at the facilities that could result in various types of on-site contamination. A

section referring to the potential for balance of site contamination and the control of such contamination should be included in DRC regulations.

Response: The DRC is well aware of regulatory issues surrounding the Moab Millsite. It is the intent to regulate uranium mills and tailings in accordance with existing rules to ensure that public health and the environment is protected. As an example of this intent, DRC points to the Corrective Action Order issued to International Uranium Corporation to investigate, delineate, and eventually cleanup a plume of chloroform on the millsite properties.

**Reference: Sections of 10 C.F.R. Part 40 Incorporated into R313-24**

**Reference: 10 C.F.R. Sec. 40.2 Coverage of inactive tailings sites.**

28. The DRC should clarify whether § 40.2(b) applies to uranium processing sites that should have been, but were not, included in the Title I remedial action program. I am particularly referring to the Fry Canyon site and the Hite tailings in the Colorado River at the bottom of Lake Powell. Does the DRC intend to use this regulation to assure that these sites are remediated? Does the DRC intend to use its authority under other DRC regulations to see that these former uranium processing site are remediated? Does the DRC intend to try to have these sites placed under the Title I program by the U.S. Congress? Or, does the DRC plan to just forget about them, as they have done for almost 50 years.

Response: It is our understanding that prior to the designation of sites as UMTRCA Title I and Title II that an extensive evaluation process was conducted on candidate sites. In the case of some sites, they were excluded because other materials were processed or in addition to uranium and thorium. An example of this was the Monticello site which was eventually remediated under the Superfund program. As far as the Hite site, this site sits under the waters of Lake Powell and it is impractical and infeasible to disturb the tailings by remediation.

The Fry Canyon site is in a remote location with small potential of risk to human health and the environment. After discovery of the site in June 1982, the site was evaluated under the Preliminary Assessment criteria under the Superfund program in 1987 and determined that it would not be a candidate site for the National Priorities list again because of the small risk and remote location. The Fry Canyon site operated between 1957-60 as a uranium upgrader facility and processed approximately 50,000 tons of ore. Approximately 45,000 tons of tailings remain at the site which also conducted copper leaching operations. The Bureau of Land Management (BLM) has always owned the site, however the site has been operated by Colorado Oil and Gas, Denver for uranium upgrading and Basinare Corporation of Monticello for copper leaching. The Fry Canyon site has also been the site of a groundwater remediation project (uranium) by the Department of Energy and the United States Geological Survey. On June 10, 1999, we provided Ms. Fields with a letter regarding contacts for this remediation project. Since

these sites were not designated as UMTRCA Title I or II sites, the rules that DRC will adopt by reference will not be applicable to these particular sites.

**Reference: 10 C.F.R. Sec. 40.20 Definitions.**

29. This section contains a number of definitions, such as the definition for "Corporation" that are not applicable to the regulation of uranium or thorium recovery facilities by either the NRC or an Agreement State. The DRC should delete the irrelevant definitions and stick to the applicable ones.

Response: The DRC is bound by SA-200 for compatibility purposes to adopt appropriate sections of 10 CFR Part 40. It is realized that some of this rulemaking may be outdated and not very applicable. NRC has chosen not to update the 10 CFR Part 40 regulations for a variety of reasons and so "no fix" to these issues is on the horizon. An option for any stakeholder is to petition the NRC for rulemaking to "fix" particular parts of 10 CFR Part 40 that a stakeholder feels strongly needs change.

**Reference: 10 C.F.R. Sec. 40.20 Types of licenses.**

30. This discussion of types of licenses is unclear because it does not explain under what circumstances a general license would be issued.

Response: See response to comment #31.

**Reference: 10 C.F.R. Sec. 40.21 General license to receive title to source or byproduct material.**

31. This regulation states that a general license is issued, but it does not state to whom, for what, and under what circumstances. It is vague and confusing and appears to come from another time and circumstance.

Response: Uranium has been viewed at times as an important commodity and it is the understanding of the DRC that this rule was intended to allow licensure of a "person" to receive title to (own) any quantity of source material. However, any general licensee would have to apply for and receive a specific license to receive, possess, use or transfer source material. The DRC is bound by SA-200 for compatibility purposes to adopt appropriate sections of 10 CFR Part 40. It is realized that some of this rulemaking may be outdated and not very applicable. NRC has chosen not to update the 10 CFR Part 40 regulations for a variety of reasons and so "no fix" to these issues is on the horizon. An option for any stakeholder is to petition the NRC for rulemaking to "fix" particular parts of 10 CFR Part 40 that a stakeholder feels strongly needs change.

**Reference: 10 C.F.R. Sec. 40.26 General license for possession and storage of byproduct material as defined in 10 C.F.R. Part 40.**

32. Again, it is unclear from the reading of this regulation as to when and why a general license would be required or useful. This regulation should be clarified. It is especially hard to understand, if an application is not necessary and the license would not be issued to a person, how general licenses are actually issued and why they are issued.

**Response:** In discussions with NRC staff, this particular section was promulgated during a time of immense statutory and regulatory changes and designed to be a "stop gap" measure in the event a specific license could not be issued in a timely manner to a licensee. The situation for which this rule was designed is not longer applicable. The DRC is bound by SA-200 for compatibility purposes to adopt appropriate sections of 10 CFR Part 40. It is realized that some of this rulemaking may be outdated and not very applicable. NRC has chosen not to update the 10 CFR Part 40 regulations for a variety of reasons and so "no fix" to these issues is on the horizon. An option for any stakeholder is to petition the NRC for rulemaking to "fix" particular parts of 10 CFR Part 40 that a stakeholder feels strongly needs change.

**Reference: 10 C.F.R. Sec. 40.31(h) Application for specific licenses.**

33. This regulation (as clarified by R313-24) refers to: "An application for a license to receive, possess, and use source material for uranium or thorium milling or by product material, as defined in 10 C.F.R. Part 40, at sites formerly associated with such milling shall contain proposed written specifications relating to milling operations and the disposition of the byproduct material to achieve the requirements and objectives set forth in appendix A of 10 C.F.R. Part 40." Emphasis added. It is unclear if this regulation also applies to applications for new licenses (i.e., at sites other than those formerly associated with such milling). This should be clarified.

**Response:** Again, this is written for a situation of the past and licensees which applied for a specific license at sites formerly associated with such milling (prior to the authorization of UMTRCA) were bound to upgrade facilities to meet the then new standards in Appendix A, 10 CFR Part 40.

34. This regulation should require an application to "contain proposed written specifications relating to milling operations and the disposition of the byproduct material to achieve the requirements and objectives set forth in "all applicable Division of Radiation Control and Ground Water Quality regulations" (not just Appendix A of Part 40). The DRC should list the applicable State regulations.

**Response:** As part of a licensing process, a prospective or existing licensee will have many opportunities to interact with DRC staff to come to an understanding of the "requirements and objectives" of all applicable state rules. If it appeared that new licensees would come forth, it may be appropriate for DRC to publish a licensing guide that sets forth the criteria for obtaining a license. It is doubtful that any new licensee applications will be processed in the near future by NRC or DRC.

35. This regulation (as clarified by R313-24) states that "each application must clearly demonstrate how the requirements and objectives set forth in appendix A of 10 C.F.R. Part 40 have been addressed." This regulation should require that the applicant demonstrate how the requirements and objectives set forth in all applicable Division of Radiation Control and Ground Water Quality regulations (not just Appendix A) have been addressed. The DRC should list the applicable State regulations.

**Response:** See response to comment #34.

36. This regulation states that "failure to clearly demonstrate how the requirements and objectives in Appendix A have been addressed shall be grounds for refusing to accept an application." Again, this regulation should refer to and list all applicable Division of Radiation Control and Ground Water Quality regulations (not just refer to Appendix A).

**Response:** See response to comment #34.

**Reference: 10 C.F.R. Sec. 40.61 Records**

37. Here, part of the regulation reads: "The licensee shall retain each record of receipt of source or byproduct material as long as the material is possessed and for three years following transfer or disposition of the source or byproduct material." The regulation should require that the licensee keep records following the transfer or disposition of source or byproduct material until at least the termination of the transferees' license. Otherwise, that transfer of source material and byproduct material will be much harder to track historically when such tracking might be required to properly account for materials and characterize source and byproduct material that has been disposed of, or even transferred again. The more complete the transfer and disposal record is, the better.

**Response:** The DRC is bound by SA-200 for compatibility purposes to adopt appropriate sections of 10 CFR Part 40. It is realized that some of this rulemaking may be outdated and not very applicable. NRC has chosen not to update the 10 CFR Part 40 regulations for a variety of reasons and so "no fix" to these issues is on the horizon. An option for any stakeholder is to petition the NRC for rulemaking to address the issue.

**Reference: Appendix A to Part 40 – Introduction**

38. The Introduction to Appendix A states in part:

The [Commission] Executive Secretary may find that the proposed alternatives meet the [Commission's] Executive Secretary's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of this appendix and the standards promulgated by the [Environmental Protection Agency in 40 CFR part 192;

subparts D and E) Utah Administrative Code, Rule R317-6, Ground Water Quality Protection.

Here the DRC has replaced the standards in 40 C.F.R. Part 192 with the State's Ground Water Quality Protection code. These regulations are not equivalent. 40 C.F.R. Part 192 standards apply to more than ground-water quality. They also apply to air quality. Therefore, the DRC must include a reference to applicable State or Federal air quality standards that must be achieved. Also, the Introduction refers to a level of stabilization and containment "more stringent than the level which would be achieved by the requirements of this appendix." Here the rule should also refer to and list all applicable requirements of the Division of Radiation Control (not just the requirements of "this appendix").

Response: See response to comment #4, the DRC will abide by requirements for other media in 40 CFR Part 192 other than the groundwater which will be addressed by requirement in R317-6.

**Reference: Appendix A to Part 40 – Criterion 3**

39. Criterion 3 begins by stating "the 'prime option' for disposal of tailings is placement below grade, either in mines or specially excavated pits." Emphasis added. Here the problem is with the disposal of tailing in "mines." This statements should not longer appear in Part 40. I am sure that the NRC no longer considers the disposal of tailings in mines as an acceptable option. Except for thousands of tons of tailings that were used as backfill in several mines in New Mexico (only one of which has been properly decommissioned under Part 40), I do not believe that licensees have disposed of mill tailings in mines as a prime disposal option. This provision is obsolete and should be deleted.

Response: The DRC is bound by SA-200 for compatibility purposes to adopt appropriate sections of 10 CFR Part 40. It is realized that some of this rulemaking may be outdated and not very applicable. NRC has chosen not to update the 10 CFR Part 40 regulations for a variety of reasons and so "no fix" to these issues is on the horizon. An option for any stakeholder is to petition the NRC for rulemaking to address the issue.

**Reference: Appendix A to Part 40 – Criterion 5A(1)**

40. Criterion 5A(1) states in part:

Unless exempted under paragraph 5A(3) of this criterion, surface impoundments (except for an existing portion) must have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil, ground water, or surface water at any time during the active life (including the closure period) of the impoundment.



Here the regulation should state that the liner should be designed and function to prevent any migration of wastes during the active life of the impoundment and until the impoundment has dried to a specific moisture content that would guarantee that no more leachate will flow from the impoundment. A liner does not last forever. Over time it will degrade and leachate will migrate from the impoundment into the subsurface if there is still moisture within the impoundment. The liner should be designed, constructed, and installed to function as a leachate barrier as long as there is leachate in the pile that will migrate. Unless the "closure period" contemplates the drying of the impoundment sufficiently to preclude migration of leachate, the regulation should allow for this drying out period (however long that may take).

There is also a question whether the criteria in Appendix A, particularly those related to tailing impoundment liners, meet the statutory mandate contained in 42 U.S.C. Sec. 2114 Sec. 2114.

42 U.S.C. Sec. 2114 Sec. 2114, Authorities of Commission respecting certain byproduct material" requires:

(a) Management function

The Commission shall insure that the management of any byproduct material, as defined in section (e)(2) of this title, is carried out in such manner as -

\* \* \*

(3) conforms to general requirements established by the Commission, with the concurrence of the [EPA] Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended.

A discussion in a Commission meeting of June 17, 1999, that was attended by the Director, DRC, would lead one to believe that the NRC requirements with respect the management of byproduct material might not be comparable to the EPA requirements, for similar hazardous material under the Solid Waste Disposal Act ("SWDA"), as amended. It appears that the EPA might require the construction of a double liner for the disposal of similar hazardous material under the SWDA. There is also a question regarding whether the Administrator of the EPA has appropriately concurred with the Commission regulations and found that the Commission. See Transcript of Commission Meeting of June 17, 1999, pages 20 to 25.

Therefore the DRC should make sure the NRC regulation that is proposes to adopt meet the mandate of the statute. If the NRC regulations for the management of byproduct material are not comparable to the EPA requirements for similar hazardous material, then it is up to the DRC to adopt regulation that are comparable to the requirements of the SWDA. The DRC should not skirt the requirements of the statute.

Response: The DRC will protect human health and the environment. New tailings cells will be constructed using current technology and standards. Existing tailings cells will continue to be monitored to ensure that any release is rapidly detected.

**Reference: Appendix A to Part 40 –II. Financial Criteria, Criterion 9**

41. The DRC should take a hard look at Criterion 9 in the light of the bankruptcy of the Atlas Corporation, the former owner of the Moab Mill. Criterion 9 and the NRC staff's implementation of that criteria failed completely and absolutely to assure that the funds necessary to decommission and reclaim the Moab Mill site were available.

Criterion 9 states, in part:

In establishing specific surety arrangements, the licensee's cost estimates must take into account total cost that would be incurred if an independent contractor were hired to reform the decommissioning and reclamation work.

Criterion 9 only requires that the surety cover the costs that would be incurred if an independent contractor were to perform the decommissioning and reclamation of the site. However, Criterion 9 failed to assure that the meager surety funds that were available for reclamation were actually spent on reclamation work at the Moab Mill site. Thirty seven percent of the surety funds were spent on the administration of the surety funds and on legal fees. These costs were not figured into the original surety. Another expense was consultant fees. Again, these costs were not figured into the original surety.

Additionally, when the NRC went to collect the surety of \$ 6.5 million, they were not even able to collect the full amount of the surety bond. They were able to collect \$5,250,00 because of hanky panky. In other words, only 80 percent of the surety was actually recovered, and, once recovered, most of that money was not spent on actual reclamation work. Something is seriously wrong with Criterion 9. The DRC has an obligation to completely review the Atlas bankruptcy and determine what exactly were the problems with Criterion 9 and NRC's implementation of Criterion 9.

The regulations the DRC adopts to assure that all necessary funds are available to decommission and reclaim a facility and to assure that all funds will actually be spent to the decommissioning and reclamation of the facility cannot be based solely on Criterion 9. Criterion 9 does not provide the assurances that are required by the Atomic Energy Act of 1954, as amended by the Uranium Mill Tailings Act of 1978.

42 U.S.C. Sec. 2201(x) requires that the Commission establish standards and instructions to ensure:

That an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided before termination of any license for byproduct material as defined in section 11e.(2), by a license to permit the completion of all requirements established by the Commission for the decontamination,

decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined.

As has been shown by the experiences related to the Atlas bankruptcy, Criterion 9 does not meet this statutory requirement. Therefore, it is up to the DRC to establish regulations that meet the requirement of 42 U.S.C. Sec. 22101(x).

Response: The DRC is bound by SA-200 for compatibility purposes to adopt appropriate sections of 10 CFR Part 40. It is realized that some of this rulemaking may be outdated and not very applicable. NRC has chosen not to update the 10 CFR Part 40 regulations for a variety of reasons and so "no fix" to these issues is on the horizon. An option for any stakeholder is to petition the NRC for rulemaking to "fix" the problem. DRC is very aware of the issues surrounding the Moab Millsite and recognizes the need to insure that appropriate financial assurance mechanisms are in place and evaluated in the event that a site has to be closed by a third party contractor.

42. The DRC has an obligation to make clear to the public what exactly happens when a licensee goes bankrupt. The NRC had to wing it with the Atlas bankruptcy. The public was never given a realistic picture of what was happening. Nothing was laid out before hand in any NRC policy or regulation. The DRC must take into consideration the fact that they will probably no longer be able to recover licensing fees when a licensee seeks bankruptcy. The DRC must make clear whether the State will take the responsibility to hire contractors to decommission a site when the licensee is no longer able to take that action or whether the State will establish a trust where the trustee and its legal advisors will be able to skim off a large portion of the surety in administering such trust. The DRC must make clear how they will assure that they will be able to actually recovery [sic] the whole amount of the surety bond, not just 80 percent. The DRC must make clear how they will assure that the surety will actually cover all decommissioning and reclamation costs, including ground-water reclamation, new studies, and consultant fees.

The DRC must make clear who will make up the deficit if there is not enough money in the surety to cover the costs of reclamation. In the Atlas situation the federal taxpayers will pay the bill. Will the state taxpayers be stuck with the bill when the surety is not sufficient once the State is an Agreement State for uranium recovery? Or, will the State cut corners on the reclamation so the reclamation plan fits the surety amount? Or, will the State go to Congress and ask that the Department of Energy (DOE) take over the site? What exactly will the State do?

Response: The DRC gained invaluable experience by participating in the Atlas bankruptcy proceeding. The State of Utah, through the Attorney General's Office, filed a claim against Atlas in the bankruptcy court proceedings and was awarded judgment in the case. The State and the NRC were signees to an bankruptcy agreement which allowed establishment of a trustee to operate the site until Congress eventually designated the site to the UMTRCA Title I program. There were some valuable lessons learned by the State in participating in this process.

**Reference: Appendix A to Part 40 – II. Financial Criteria, Criterion 10**

43. Criterion 10 states in part:

A minimum charge of \$250,000 (1978 dollars) to cover the costs of long-term surveillance must be paid by each mill operator to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license.

Here the DRC should update the minimum charge to a current dollar amount. Again, the DRC should review this regulation in the light of the Atlas experience. It is clear that funds for long-term surveillance of the Moab Mill site are not available. It is also clear that even now, the federal agencies have no idea of what long-term surveillance requirements will actually be if the Moab Mill tailings are capped in place. Criterion 10 falls far short of actually assuring that all the costs of long-term surveillance would actually be paid by the licensee. The DRC financial assurance regulations must state that funds to cover the long-term surveillance costs must be provided by the licensee prior to the operation of a facility and be periodically updated. The State should not wait until the facility is about to be decommissioned or the license is about to be terminated.

Response: The DRC is bound by SA-200 for compatibility purposes to adopt appropriate sections of 10 CFR Part 40. It is realized that some of this rulemaking may be outdated and not very applicable. NRC has chosen not to update the 10 CFR Part 40 regulations for a variety of reasons and so "no fix" to these issues is on the horizon. An option for any stakeholder is to petition the NRC for rulemaking to address the issue.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 28, 2002



Mr. William J. Sinclair, Director  
Division of Radiation Control  
Department of Environmental Quality  
168 North 1950 West  
P.O. Box 144850  
Salt Lake City, UT 84114-4850

Dear Mr. Sinclair:


We have reviewed the draft Utah regulations R313-15-1001, "Waste Disposal - General Requirements;" R313-19-2, "Requirements of General Applicability to Licensing of Radioactive Material - General;" R313-22-39, "Executive Secretary Action on Applications to Renew or Amend;" and R313-24, "Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements," which were sent to us by e-mail dated April 24, 2002 for the first three rules and April 17, 2002 for the last rule. The regulations were reviewed to ensure that the requirements in the Uranium Mill Tailings Radiation Control Act (UMTRCA) are adequately addressed by the Utah regulations. The regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) regulations in 10 CFR Part 40 including Appendix A and 10 CFR Part 150. We discussed our review of the regulations with you and your staff on June 3, 2002.

The NRC review has identified five comments required to be addressed for compatibility and several suggestions to clarify the language of the proposed regulations (Enclosed). For the most part, the suggestions provide clarifications to avoid confusion on what materials are covered in the revised regulations. The NRC review does not include comments on the groundwater portion of the regulations which will be addressed separately. Under our current procedure, a finding that a State regulation meets the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final State regulation. However, we have determined that if your proposed regulations were adopted incorporating the comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure SA-200.

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in STP Procedure SA-201, Review of State Regulations (November 10, 1998), please highlight the final changes and send one copy in a computer readable format, if possible. The State Regulation Status (SRS) Data Sheet has been updated and is enclosed.

If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me or Dennis Sollenberger of my staff at 301-415-2819 or DMS4@nrc.gov.

Sincerely,

  
Josephine M. Piccone, Deputy Director  
Office of State and Tribal Programs

Enclosures:  
As stated

COMMENTS ON DRAFT UTAH REGULATIONS  
NEEDED FOR COMPATIBILITY

State Regulation or SSR	NRC Regulation or SSR	RATS ID	Category	Subject and Comments
R313-24-3	10 CFR 150.		C	<p>The State must perform an analysis of the information and have it available prior to the hearings on the licensing action. We recommend that a new subsection be added to require written analysis of the environmental report and that the analysis be available prior to any hearing on the licensing action.</p> <p>This must be added for compatibility.</p>
R313-24-4 (1)(b)	App. A, Crit. 5B-F, Crit. 7		C	<p>The incorporation of the Utah groundwater standards instead of the 10 CFR Part 40, App. A Criteria will be addressed separately and must be resolved to be compatible.</p>
R313-24-4 (1)	App. A, Crit. 11&12, Part 150.15a(b)		NRC	<p>Utah does not exclude App. A, Criteria 11A through 11F, and Criterion 12 which are responsibilities reserved to the NRC in 10 CFR 150.15a(b). These criteria may be in the Utah regulations if referenced as items reserved for NRC affecting Utah licensees.</p> <p>Possible wording for such an exclusion: "(c) In Appendix A to 10 CFR Part 40, exclude Criteria 11 and 12. Utah licensees should be aware of the requirements in these sections so that they can comply with the NRC requirements prior to termination of their license."</p> <p>This must be changed for compatibility.</p>
R313-24-4 (2)(j)			C	<p>The substitution of R317-6 for 40 CFR 192 standards is not appropriate since the EPA standards cover a broader spectrum of standards than the groundwater protection covered in R317-6. Utah may want to substitute the R317-6 for the groundwater standards in 40 CFR 192.</p> <p>This must be changed for compatibility.</p>
R313-24-4 (2)(l)(vii)			NRC	<p>This substitution needs to be deleted. The proposed substitution is to a section that is reserved to NRC (see comment above as it applies to Criteria 11A-F and 12).</p> <p>This must be changed for compatibility.</p>

## CLARIFICATIONS AND SUGGESTIONS

State Regulation	Subject and Comments
R313-19-2	<p>We suggest that the wording be changed to be consistent with the R313-12-3 definitions for source material milling and byproduct material(b) as follows:</p> <p>"Licensees engaged in source material milling [operations], authorized to possess byproduct(b) material [(tailings and other wastes)] from source material milling [operations], authorized to possess and maintain a source material milling facility in standby mode, authorized to receive byproduct(b) material from other persons for disposal, or authorized to possess and dispose of byproduct(b) material generated by source material milling [operations] are subject to the requirements of R313-24."</p> <p>This rewording would make it clear which materials are covered using the specific terms as defined in the Utah regulations.</p>
R313-24-1 (1)	<p>We suggest that the wording be changed to be consistent with the R313-12-3 definitions for source material milling and byproduct(b) material.</p> <p>Paragraph (1) should read: "The purpose of this rule is to prescribe requirements for possession and use of source material in source material milling [operations] such as conventional milling, in situ leaching, or heap-leaching. The rule includes requirements for the possession of byproduct(b) material, as defined in R313-12-3, [(tailings and other wastes)] from source material milling [operations], as well as, possession and maintenance of a facility in standby mode. In addition, requirements are prescribed for the receipt of byproduct(b) material from other persons for possession and disposal. The rule also prescribes requirements for receipt of byproduct(b) material from other persons for possession and disposal incidental to the byproduct(b) material generated by the licensee's source material milling operations."</p>
R313-24-2	To use terms consistently, this section should read: "The requirements in Rule R313-24 apply to source material milling, byproduct(b) material, and byproduct(b) disposal facilities.
R313-24-4	The incorporation of 40.42(k)(3)(i) without the initial paragraph in 40.42(k), appears out of context and may be confusing to licensees. We suggest adding the introductory paragraph also.
R313-24-4 (2)(i)	As commented above, the Utah terms should be used in the Utah regulations. Substitute "source material milling" for the first "uranium milling." It is not clear which section on 10 CFR Part 40 is being referred to in this substitution (40.65 is assumed). Please clarify by adding a reference to the specific section where the substitution is to be made.
R313-24-4 (2)(i)(i)	Please clarify where in Appendix A the substitution is being made. You may want to add the phrase "in the first paragraph of the Introduction to Appendix A."
R313-24-4 (2)(i)(ii)	Please clarify where in Appendix A the substitution is being made. You may want to add the phrase "in the definition of licensed site in Appendix A."
R313-24-4 (2)(i)(vi)	Please clarify where in Appendix A the substitution is being made. You may want to add the phrase "in Criterion 9."

[ ] bracketed material may be left out without changing the meaning of the regulations.

# STATE REGULATION STATUS

State: Utah

[Two amendments reviewed are identified by a ★  
at the beginning of each equivalent NRC regulation.]

Tracking Ticket Number:  
Date: June 28, 2002

NRC Chronology Identification	FR Notice (Due Date for State Implementation)	RATS ID	Proposed (P) / Final (F) Rule / ML #	NRC Review Y, N <sup>2</sup> / Date / ML #	Final State Regulation (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 845 (1/10/94)	1991-1			1/10/94
ASNT Certification of Radiographers-Part 34	56 FR 1154; (none)	1991-2			Not required <sup>3</sup>
Standards for Protection Against Radiation-Part 20	56 FR 2350; 56 FR 61352; 57 FR 3858; 57 FR 57877; 58 FR 6757; 59 FR 41641; 60 FR 2013; (1/1/94)	1991-3	F	N 2/10/98	1/23/98
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 6450; (10/15/94)	1991-4			10/26/94
Quality Management Program and Misadministrations-Part 35	56 FR 3414; (1/27/95)	1992-1	P	N 1/26/98	3/10/95
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 4556; (none)	1992-2			Not required <sup>3</sup>
Decommissioning Recordkeeping and License Termination: Documentation Additions (Restricted areas and spill sites)-Parts 30, 40	58 FR 39228; (10/25/96)	1993-1	F	N 1/8/97	1/15/96
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 775; (7/1/96)	1993-2	F	N 6/14/00	3/10/00
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 3356; (7/22/96)	1993-3	P	N 9/23/96	5/31/96
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 6826; 59 FR 1618; (none)	1994-1			Not required <sup>3</sup>
★Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40	59 FR 28220; (7/1/97)	1994-2	P	Y 6/28/02 ML021790511	
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 3626; (8/15/97)	1994-3	F	N 2/10/98	7/18/97
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 6167; 59 FR 65243; 60 FR 32; (1/1/98)	1995-1	F	N 2/10/98	7/18/97
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 790; (3/13/98)	1995-2	P	N 1/26/98	3/20/98
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 1549; 60 FR 25983; (3/1/98)	1995-3	P	N 1/26/98	1/23/98
Performance Requirements for Radiography Equipment-Part 34	60 FR 2223; (6/30/98)	1995-4			7/18/97
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 3538; (8/14/98)	1995-5	P	N 1/26/98	3/20/98
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 3535; (11/24/98)	1995-6	F	N 2/10/98	7/18/97
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 4523; (10/20/98)	1995-7	P	N 1/26/98	8/11/98



NBC Chronology Identification		FR Notice (Due Date for State Implementation)	RATS ID	Proposed (P) / Final (F) Rule / ML #	NRC Review / Date / ML #	Final State Regulation (Effective Date)
10 CFR Part 71: Compatibility with the International Atomic Energy Agency - Part 71		60 FR 50248; 61 FR 28724; (4/1/99)	1996-1	F	ML 4/16/99	3/12/99
One Time Extension of Certain Byproduct, Source and Special Nuclear Material; Licenses-Parts 30, 40, 70		61 FR 1109; (none)	1996-2	F	ML 2/10/98	Not required <sup>3</sup>
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70		61 FR 24669; (6/17/99)	1996-3	F Part 30	ML 2/10/98	3/20/98
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20		61 FR 65120; (1/9/00)	1997-1	P	ML 1/26/98	3/20/98
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150		62 FR 1662; (2/27/00)	1997-2			6/11/99
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35		62 FR 4120; (5/29/00)	1997-3	P	ML 1/26/09	3/20/98
Fissile Material Shipments and Exemptions-Part 71		62 FR 5907; (none)	1997-4			Not required <sup>3</sup>
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150		62 FR 28947; (6/27/00)	1997-5	F	ML 4/1/98	5/15/97
Radiological Criteria for License Termination-Parts 20, 30, 40, 70		62 FR 39057; (8/20/00)	1997-6	F	ML 6/14/00	3/10/00
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30		62 FR 63634; (1/02/01)	1997-7	F	ML 4/16/99	3/12/99
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150		63 FR 1890; 63 FR 13773; (2/12/01)	1998-1	F	ML 7/31/01 ML 012150220	1/26/01
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70		63 FR 29535; (none)	1998-2			Not required <sup>3</sup>
License Term for Medical Use Licenses-Part 35		63 FR 31604; (none)	1998-3			Not required <sup>3</sup>
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34		63 FR 37059; (7/9/01)	1998-4	P	ML 010870073 ML 011170330	5/11/01
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36		63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	F	ML 013530478 ML 020390486	9/14/01
Transfer for Disposal and Manifests: Minor Technical Conforming Amendments-Part 20		63 FR 50127; (11/20/01)	1998-6	F	ML 013530478 ML 020390486	9/14/01
★ Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40		64 FR 17506; (6/11/02)	1999-1	P	ML 021790511	
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31		64 FR 42269; (none)	1999-2			Not required <sup>3</sup>
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20		64 FR 54543; 64 FR 55524; (2/2/03)	1999-3	F	ML 013530478 ML 020390486	9/14/01
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39		65 FR 20337; (5/17/03)	2000-1	F	ML 012850044 ML 020020182	9/14/01

# **NRC Chronology Identification**

	FR Notice (Due Date for State Implementation)	RATS ID	Proposed (P) / Final (F) Rule / ML #	NRC Review / Y, N, / Date / ML #	Final State Regulation (Effective Date)
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	P Part 34 ML010870073	N 4/27/01 ML01170330	
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material-Parts 30, 31, and 32	65 FR 79162; (2/16/04)	2001-1			
Revision of the Skin Dose Limit-Part 20 that became effective April 5, 2002.	67 FR 16298; (4/5/05)	2002-1			
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (4/24/05)	2002-2			

1. Or other generic Legally Binding Requirements.

2. (Y/N) Y means "Yes," there are comments in the review letter that the State needs to address.  
N means "No," there are no comments in the review letter.

3. Not required means these regulations are not required for purposes of compatibility.

4. ADAMS ML Number

*Law Offices of Anthony J. Thompson, P.C.*

1225 19<sup>th</sup> Street, NW., Suite 200  
Washington, DC 20036  
202-496-0780  
Fax 202-496-0783  
(e-mail): ajthompson@athompsonlaw.com

June 28, 2002



**VIA FACSIMILE, ELECTRONIC-MAIL AND US MAIL**

Mr. William Sinclair, Director  
Division of Radiation Control  
Department of Environmental Quality  
168 North 1950 West  
Salt Lake City, UT 84116-3085

**Re: IUC's Comments on Proposed Rules**

Dear Bill:

The Law Offices of Anthony J. Thompson, P.C. is filing these comments on behalf of its client International Uranium (USA) Corporation ("IUC"), owner and operator of the White Mesa Mill in Blanding, Utah.

IUC's specific comments on the Proposed Rules currently out for public comment are the following:

**Proposed Rule R313-24, Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements:**

(1) R313-24-4(1)(b) calls for the replacement of 10 C.F.R. Part 40, Appendix A, Criteria 5B(1) through 5H, 7A, and 13, with Utah Administrative Code R317-6 entitled *Groundwater Quality Protection*. On this point, IUC would like to make several comments.

DEQ's substitution of its groundwater quality regulations for NRC's regulatory program appears to fit the provisions of Section 274(o) of the Atomic Energy Act of 1954, as amended by UMTRCA, allowing an Agreement State under Section 83 to propose alternatives to the regulatory program promulgated by NRC to protect public health, safety, and the environment. IUC notes that, while DEQ may propose regulations in this manner, no regulations falling under these statutory provisions may be finalized or become effective until an NRC hearing is held and such regulations are approved as an appropriate alternative for the protection of public health, safety, and the environment.

DEQ defines "pollutant" to include any radioactive materials discharged into "waters of the state." Under its NRC-approved groundwater monitoring program, IUC's "point of compliance" ("POC") is at the downgradient edge of the White Mesa Mill's tailings cells in the perched aquifer so that any potential release of radiological or hazardous constituents from the tailings cells into the perched groundwater zone may be detected and remediated. IUC understands that under R317-6-6.9, the Executive Secretary has the discretion to determine where the compliance monitoring point shall be after taking into account the site-specific characteristics of a given site. Please confirm that DEQ will adopt the NRC POC as the State's compliance monitoring point for the White Mesa Mill.

(2) DEQ's discussion of Alternate Concentration Limits ("ACL") in R317-6-6(6.4) states that an ACL will be allowed for facilities with Class III groundwater if steps are being taken to correct the source of the contamination, including a program and timetable for completion, the "pollution" causes *no* threat to human health and the environment, and the ACL is justified based on *substantial overriding social and economic benefits*. First, NRC's Part 40, Criterion 5B(6) states that an ACL may be established if the constituent at issue will not pose a *substantial present or potential hazard to human health or the environment* as long as the ACL is not exceeded. IUC believes that the imposition of a requirement that a pollutant pose *no* threat whatsoever may force licensees to engage in groundwater corrective action that may be too rigorous in light of the potential risk and, in some cases, impossible to achieve. Additionally, a component of DEQ's requirements for ACLs is that it is justified by *substantial overriding social and economic benefits*. An ACL is designed to preserve the quality of groundwater at a site when it can be demonstrated that it is not economically feasible, is impossible or unnecessary to remediate such groundwater to levels of higher quality because the ACL will protect against any significant threat to human health and the environment if it is not exceeded. The Utah criteria are vague and undefined and appear to have little or no relation to protection of human health and the environment. This conflict with NRC's requirement for ACLs is significant and should be addressed prior to promulgating any final rule. In many cases, ACLs which are adequately protective of human health and the environment may be the only way sites will be able to fulfill license termination requirements. Thus, to avoid boxing DEQ and licensees into intractable problems in the future, the issue should be addressed now.

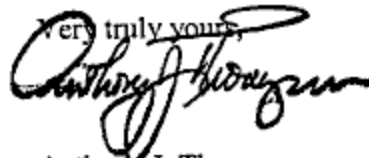
(3) Additionally, there does not appear to be any explanation of the State ACL mechanism. As DEQ is well-aware, NRC has implemented guidance for ACLs which makes it plain how the ACL will function. NRC's ACLs involve a POC and point of exposure ("POE"). DEQ's rules identify a compliance monitoring point but no POE. Presumably, the ACL at the compliance monitoring point which assures protection of public health and the environment at the point of public exposure will be acceptable under DEQ rules but the mechanism is not clear.

(4) In its August 26, 2000 paper entitled *Elements of a Utah Agreement State Program for Uranium Mills Regulation, Divisions of Radiation Control and Water Quality, Utah Department of Environmental Quality*, DEQ stated that "[t]he State of Utah

will clarify during rulemaking that there is no distinction between pre and post-1978 uranium and thorium mill tailings and wastes that would otherwise satisfy the definition of 11e.(2) byproduct material."

IUC requests that DEQ provide a citation to the applicable regulation where this will be addressed or a description of when and how this issue will be handled in the future.

IUC appreciates the opportunity to comments on these Proposed Rules and looks forward to working with DEQ in the future.

Very truly yours,  
  
Anthony J. Thompson

June 26, 2002

Mr. William J. Sinclair  
Division of Radiation Control  
Department of Environmental Quality  
168 North 1950 West  
P.O. Box 144850  
Salt Lake City, Utah 84114-4850  
bsinclair@utah.gov



**RE: PROPOSED RULE R313-24** — Comments on Division of Radiation Control, Department of Environmental Quality, State of Utah, Proposed Rule (DAR File No. 24738, published in the 05/15/2002, issue, Vol. 2002, No.10, of the Utah State Bulletin).

## **I. R313-24**

### **1. General**

The Division of Radiation Control (DRC) should have provided more extensive explanation of the proposed rule. If this were a proposed federal regulation, the notice of the proposed rule would include extensive 'statements of consideration,' which would provide the public with further background information and would explicate and justify the various sections of the proposed rule. Such explication and justification is missing from the proposed rule.

### **2. R313-24-3. Environmental Analysis.**

a. At R313-24-3(1), the DRC should explain what is meant by "major amendment" to a license. The DRC should provide clarification regarding what types of amendments to uranium recovery or byproduct disposal site licenses will require environmental reports.

b. At R33-24-3-1, the DRC should state that environmental reports should include assessment of hazards related to the transportation of materials to and from the facility.

c. At R33-24-3-1, the DRC should state that the environmental report should include an assessment of the cumulative effects of the proposed action when considered with other similar actions. There should not be an attempt by the licensee to segment licensing actions so that an environmental report might not be required, or that the cumulative effects of a number of segmented licensing actions are never considered.

d. R313-24-3 does not, but should, provide an opportunity for the public to comment on a draft environmental report.

e. R313-24-3 does not explain how the DRC will use the environmental report in making decisions regarding a proposed licensing action. There does not seem to be any provision for the issuance by the DRC of a document equivalent to an Environmental



**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**DIVISION OF RADIATION CONTROL**

**Response to Comments regarding repropoed rulemaking R313-19-2,  
"Requirements of General Applicability to Licensing of Radioactive Material" and  
R313-24, "Uranium Mills and Source Material Mill Tailings Disposal Facility  
Requirements"**

**SEPTEMBER 2002**

Comments from the law offices of Parsons, Behle, and Latimer (Lindsay Ford) on behalf of International Uranium Corporation

**Reference: Proposed Rule R313-24, *Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements*:**

1. There was concern expressed regarding the process being used to incorporate the Utah groundwater standards in place of 10 C.F.R. Part 40, Appendix A Criteria.

RESPONSE: It was recognized that in DRC response to comments earlier, it had been indicated the need for NRC to approve the Utah groundwater rules as "an appropriate alternative standard for the protection of public health, safety, and the environment." It was also pointed out the Division is preparing an in depth comparison which should satisfy requirements of the NRC and the Radiation Control Act. DRC indicated that the information will be available as NRC determines the administrative process for determination of an "alternate standard." The commenter accepted the approach DRC has taken and emphasizes the need for requirements of UCA 19-3-104(8) and (9) be met. DRC will work closely with IUC and others in addressing concerns as they may arise during the "groundwater standard approval process."



One Utah Center  
201 South Main Street  
Suite 1800  
Post Office Box 45898  
Salt Lake City, Utah  
84145-0898  
Telephone 801 532-1234  
Facsimile 801 536-6111



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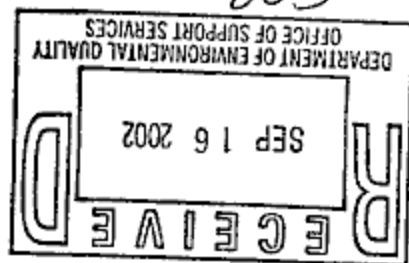


David R. Bird  
Direct Dial  
(801) 536-6824  
E-Mail  
DBird@pblutah.com

September 16, 2002

**VIA FAX 801-533-4097  
AND HAND DELIVERY**

William Sinclair, Director  
Division of Radiation Control  
Department of Environmental Quality  
168 North 1950 West  
Salt Lake City, UT 84116-3085



**Re: Comments to Proposed Rules: R313-19-2 and R313-24.**

Dear Bill:

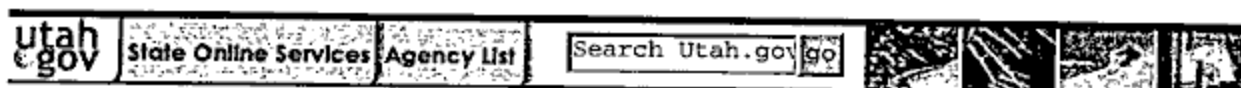
Parsons Behle & Latimer is filing these comments on behalf of its client International Uranium (USA) Corporation ("IUC"), operator of the White Mesa Mill in Blanding, Utah.

We are addressing today specifically the process the Division is using to incorporate the Utah groundwater standards in place of 10 C.F.R. Part 40, App. A. Criteria.

Your response to comments made by both the NRC and IUC in the earlier round of rulemaking indicates the need for an NRC hearing to approve the Utah groundwater regulations as "an appropriate alternative standard for the protection of public health, safety and the environment."

You also indicated the Division is preparing "an in-depth comparison of the groundwater standards in 10 CFR Part 40, Appendix A and R317-6" which "should satisfy the requirements under the Radiation Control Act Section 104(8) and (9)" to establish their equivalency. The Response to Comments promises: "This information will be available as NRC determines the administrative process for determination of an 'alternate standard.'"

IUC recognizes the "Catch-22 situation" you feel the state is in where it must finalize rulemaking prior to submitting its final application. We accept the approach the Division is taking but again reiterate our concern that the requirements of Utah Code Ann. §§ 19-3-104(8) & (9) be met.



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# TABLE OF CONTENTS

## Title R15. Administrative Services, Administrative Rules.

As in effect on September 1, 2002

1. [R15-1. Administrative Rule Hearings.](#)
2. [R15-2. Public Petitioning for Rulemaking.](#)
3. [R15-3. Definitional Clarification of Administrative Rule.](#)
4. [R15-4. Administrative Rulemaking Procedures.](#)
5. [R15-5. Administrative Rules Adjudicative Proceedings.](#)

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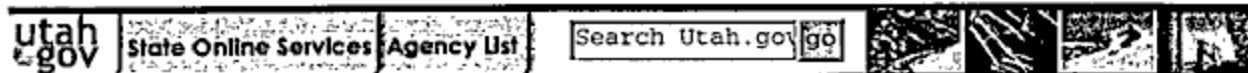
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# Rule R15-1. Administrative Rule Hearings.

As in effect on September 1, 2002

## Table of Contents

- [R15-1-1. Authority.](#)
- [R15-1-2. Definitions.](#)
- [R15-1-3. Purpose.](#)
- [R15-1-4. When Agencies Hold Hearings.](#)
- [R15-1-5. Hearing Procedures.](#)
- [R15-1-8. Decision on an Issue Regarding Rulemaking Procedure.](#)
- [R15-1-9. Appeal and Judicial Review.](#)
- **KEY**
- [Date of Enactment or Last Substantive Amendment](#)
- [Notice of Continuation](#)
- [Authorizing, Implemented, or Interpreted Law](#)

### **R15-1-1. Authority.**

(1) This rule establishes procedures and standards for administrative rule hearings as required by Subsection 63-46a-10(1)(a).

(2) The procedures of this rule constitute the minimum requirements for mandatory administrative rule hearings. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

### **R15-1-2. Definitions.**

(1) Terms used in this rule are defined in Section 63-46a-2.

(2) In addition:

- (a) "hearing" means an administrative rule hearing; and
- (b) "officer" means an administrative rule hearing officer.

### **R15-1-3. Purpose.**

(1) The purpose of this rule is to provide:

- (a) procedures for agency hearings on proposed administrative rules or rules changes, or on the need for a rule or change;
- (b) opportunity for public comment on rules; and
- (c) opportunity for agency response to public concerns about rules.

**R15-1-4. When Agencies Hold Hearings.**

- (1) Agencies shall hold hearings as required by Subsection 63-46a-5(2).
- (2) Agencies may hold hearings:
  - (a) during the public comment period on a proposed rule, after its publication in the bulletin and prior to its effective date;
  - (b) before initiating rulemaking procedures under Title 63, Chapter 46a, to promote public input prior to a rule's publication;
  - (c) during a regular or extraordinary meeting of a state board, council, or commission, in order to avoid separate and additional meetings; or
  - (d) to hear any public petition for a rule change as provided by Section 63-46a-12.
- (3) Voluntary hearings, as described in this section, follow the procedures prescribed by this rule or any other procedures the agency may provide by rule.
- (4) Mandatory hearings, as described in this section, follow the procedures prescribed by this rule and any additional requirements of state or federal law.
- (5) If an agency holds a mandatory hearing under the procedures of this rule during the public comment period described in Subsection 63-46a-4(6), no second hearing is required for the purpose of comment on the same rule or change considered at the first hearing.

**R15-1-5. Hearing Procedures.**

- (1) Notice.
  - (a) An agency shall provide notice of a hearing by:
    - (i) publishing the hearing date, time, place, and subject in the bulletin;
    - (ii) mailing copies of the notice directly to persons who have petitioned for a hearing or rule changes under Section 63-46a-5 or 63-46a-12, respectively; and
    - (iii) posting for at least 24 hours in a place in the agency's offices which is frequented by the public.
  - (b) If a rules hearing becomes mandatory after the agency has published the proposed rule in the bulletin, the agency shall notify in writing persons requesting the hearing of the time and place.

(c) An agency may provide additional notice of a hearing, and shall give further notice as may otherwise be required by law.

(2) Hearing Officer.

(a) The agency head shall appoint as hearing officer a person qualified to conduct fairly the hearing.

(b) No restrictions apply to this appointment except the officer shall know rulemaking procedure.

(c) However, if a state board, council, or commission is responsible for agency rulemaking, and holds a hearing, a member or the body's designee may be the hearing officer.

(3) Time. The officer shall open the hearing at the announced time and place and permit comment for a minimum of one hour. The hearing may be extended or continued to another day as necessary in the judgment of the officer.

(4) Comment.

(a) ~~At the opening of the hearing, the officer shall explain the subject and purpose of the~~ hearing and invite orderly, germane comment from all persons in attendance. The officer may set time limits for speakers and shall ensure equitable use of time.

(b) The agency shall have a representative at the hearing, other than the officer, who is familiar with the rule at issue and who can respond to requests for information by those in attendance.

(c) The officer shall invite written comment to be submitted at the hearing or after the hearing, within a reasonable time. Written comment shall be attached to the hearing minutes.

(d) The officer shall conduct the hearing as an open, informal, orderly, and informative meeting. Oaths, cross-examination, and rules of evidence are not required.

(5) The Hearing Record.

(a) The officer shall cause to be recorded the name, address, and relevant affiliation of all persons speaking at the hearing, and cause an electronic or mechanical verbatim recording of the hearing to be made, or make a brief summary, of their remarks.

(b) The hearing record consists of a copy of the proposed rule or rule change, submitted written comment, the hearing recording or summary, the list of persons speaking at the hearing, and other pertinent documents as determined by the agency.

(c) The hearing officer shall, as soon as practicable, assemble the hearing record and transmit it to the agency for consideration.

(d) The hearing record shall be kept with and as part of the rule's administrative record in a file available at the agency offices for public inspection.

**R15-1-8. Decision on an Issue Regarding Rulemaking Procedure.**

(1) When a hearing issue requires a decision regarding rulemaking procedure, the officer shall

submit a written request for a decision to the director as soon as practicable after, or after recessing, the hearing, as provided in Section R15-5-6. The director shall reply to the agency head as provided in Subsection R15-5-6(2). The director's decision shall be included in the hearing record.

**R15-1-9. Appeal and Judicial Review.**

(1) Persons may appeal the decision of the agency head or the division by petitioning the district court for judicial review as provided by law.

**KEY**

administrative law, government hearings

**Date of Enactment or Last Substantive Amendment**

June 1, 1996

**Notice of Continuation**

October 16, 2000

**Authorizing, Implemented, or Interpreted Law**

63-46a-10

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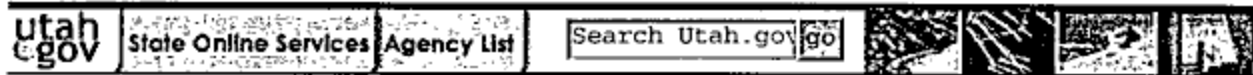
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# Rule R15-2. Public Petitioning for Rulemaking.

As in effect on September 1, 2002

## Table of Contents

- [R15-2-1. Authority.](#)
- [R15-2-2. Definitions.](#)
- [R15-2-3. Petition Procedure.](#)
- [R15-2-4. Petition Form.](#)
- [R15-2-5. Petition Consideration And Disposition.](#)
- [KEY](#)
- [Date of Enactment or Last Substantive Amendment](#)
- [Notice of Continuation](#)
- [Authorizing, Implemented, or Interpreted Law](#)

### **R15-2-1. Authority.**

As required by Subsection 63-46a-12(2), this rule prescribes the form and procedures for submission, consideration, and disposition of petitions requesting the making, amendment, or repeal of an administrative rule.

### **R15-2-2. Definitions.**

- (1) Terms used in this rule are defined in Section 63-46a-2.
- (2) In addition, "rule change" means:
  - (a) making a new rule;
  - (b) amending, repealing, or repealing and reenacting an existing rule;
  - (c) amending a proposed rule further by filing a change in proposed rule under the provisions of Section 63-46a-6;
  - (d) allowing a proposed (new, amended, repealed, or repealed and reenacted) rule or change in proposed rule to lapse; or
  - (e) any combination of the above.

**R15-2-3. Petition Procedure.**

- (1) The petition shall be addressed and delivered to the head of the agency authorized by law to make the rule change requested.
- (2) The agency receiving the petition shall stamp the petition with the date of receipt.

**R15-2-4. Petition Form.**

The petition shall:

- (a) be clearly designated "petition for a rule change";
- (b) state the approximate wording of the requested rule change;
- (c) describe the reason for the rule change;
- (d) include an address and telephone where the petitioner can be reached during regular work days; and
- (e) be signed by the petitioner.

**R15-2-5. Petition Consideration And Disposition.**

- (1) The agency head or designee shall:
  - (a) review and consider the petition;
  - (b) write a response to the petition stating:
    - (i) that the petition is denied and reasons for denial, or
    - (ii) the date when the agency is initiating a rule change consistent with the intent of the petition; and
  - (c) send the response to the petitioner within 30 days of receipt of the petition.
- (2) The petitioned agency may interview the petitioner, hold a public hearing on the petition, or take any action the agency, in its judgement, deems necessary to provide the petition due consideration.
- (3) The agency shall retain the petition and a copy of the agency's response as part of the administrative record.
- (4) The agency shall mail copies of its decision to all persons who petitioned for a rule change.

**KEY**

administrative law

**Date of Enactment or Last Substantive Amendment**



June 1, 1996

**Notice of Continuation**

October 16, 2000

**Authorizing, Implemented, or Interpreted Law**

§ 15-1-17

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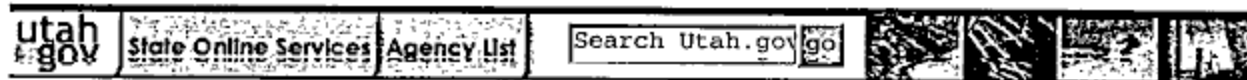
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# Rule R15-3. Definitional Clarification of Administrative Rule.

As in effect on September 1, 2002

## Table of Contents

- [R15-3-1. Authority, Purpose, and Definitions.](#)
- [R15-3-2. Agency Discretion.](#)
- [R15-3-3. Use of Incorporation by Reference in Rules.](#)
- [R15-3-4. Computer-Prohibited Material.](#)
- [KEY](#)
- [Date of Enactment or Last Substantive Amendment](#)
- [Notice of Continuation](#)
- [Authorizing, Implemented, or Interpreted Law](#)

### **R15-3-1. Authority, Purpose, and Definitions.**

(1) This rule is authorized under Subsection 63-46a-10(1) which requires the division to administer the Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

(2) This rule clarifies when rulemaking is required, and requirements for incorporation by reference within rules.

(3) Terms used in this rule are defined in Section 63-46a-2.

### **R15-3-2. Agency Discretion.**

(1) A rule may restrict agency discretion to prevent agency personnel from exceeding their scope of employment, or committing arbitrary action or application of standards, or to provide due process for persons affected by agency actions.

(2) A rule may authorize agency discretion that sets limits, standards, and scope of employment within which a range of actions may be applied by agency personnel. A rule may also establish criteria for granting exceptions to the standards or procedures of the rule when, in the judgment of authorized personnel, documented circumstances warrant.

(3) An agency may have written policies which broadly prescribe goals and guidelines. Policies are not rules unless they meet the criteria for rules set forth under Section 63-46a-3(2).

(4) Within the limits prescribed by Sections 63-46a-3 and 63-46a-12.1, an agency has full discretion regarding the substantive content of its rules. The division has authority over

nonsubstantive content under Subsections 63-46a-10(2) and (3), and 63-46a-10.5(2) and (3), rulemaking procedures, and the physical format of rules for compilation in the Utah Administrative Code.

**R15-3-3. Use of Incorporation by Reference in Rules.**

(1) An agency incorporating materials by reference as permitted under Subsection 63-46a-3(7) shall comply with the following standards:

(a) The rule shall state specifically that the cited material is "incorporated by reference."

(b) If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the rule.

(c) If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its rule through rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.

(d) In accordance with Subsection 63-46a-3(7)(c), an agency shall describe substantive changes that appear in the materials incorporated by reference as part of the "summary of rule or change" in the rule analysis.

(2) An agency shall comply with copyright requirements when it provides the division a copy of material incorporated by reference.

**R15-3-4. Computer-Prohibited Material.**

(1) All rules shall be in a format that permits their compatibility with the division's computer system and compilation into the Utah Administrative Code.

(2) Rules may not contain maps, charts, graphs, diagrams, illustrations, forms, or similar material.

(3) The division shall issue and provide to agencies instructions and standards for formatting rules.

**KEY**

administrative law

**Date of Enactment or Last Substantive Amendment**

June 1, 1996

**Notice of Continuation**

October 16, 2000

**Authorizing, Implemented, or Interpreted Law**

63-46a-10; 63-46a-3

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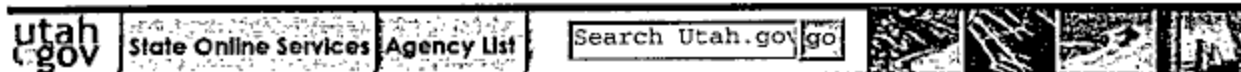
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# Rule R15-4. Administrative Rulemaking Procedures.

As in effect on September 1, 2002

## Table of Contents

- [R15-4-1. Authority and Purpose.](#)
- [R15-4-2. Definitions.](#)
- [R15-4-3. Publication Dates and Deadlines.](#)
- [R15-4-4. Thirty-day Comment Period.](#)
- [R15-4-5. Notice of the Effective Date of a Rule.](#)
- [R15-4-6. Nonsubstantive Changes in Rules.](#)
- [R15-4-7. Substantive Changes in Proposed Rules.](#)
- [R15-4-8. Temporary 120-day Rules.](#)
- [R15-4-9. Underscoring and Striking Out.](#)
- [R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.](#)
- [KEY](#)
- [Date of Enactment or Last Substantive Amendment](#)
- [Notice of Continuation](#)
- [Authorizing, Implemented, or Interpreted Law](#)

### R15-4-1. Authority and Purpose.

(1) This rule establishes procedures for filing and publication of agency rules under Sections 63-46a-4, 63-46a-6, and 63-46a-7, as authorized under Subsection 63-46a-10(1).

(2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

### R15-4-2. Definitions.

(1) Terms used in this rule are defined in Section 63-46a-2.

(2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the division the most recent five-year review required under Subsection 63-46a-9(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as

required by Subsection 63-46a-10(1)(f);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63-46a-4(2)(b);

(d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;

(e) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;

(f) "Savings" means:

(i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;

(ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

(iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or

(iv) any combination of these aggregated monetary amounts.

(g) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63-46a-4(2)(b).

#### **R15-4-3. Publication Dates and Deadlines.**

(1) For the purposes of Subsections 63-46a-4(2) and 63-46a-6(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

#### **R15-4-4. Thirty-day Comment Period.**

(1) For the purposes of Subsections 63-46a-4(6) and 63-46a-4(7), and in conformity with Utah Rules of Civil Procedures, Rule 6 (a), "30 days" shall be computed by:

(a) counting the day after publication of the rule as the first day; and

(b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

(c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the comment period runs until 5 p.m. the next regular business day.

(2) A rule may be made effective on the day after the comment period expires.

**R15-4-5. Notice of the Effective Date of a Rule.**

(1) (a) Upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2) (a) The agency shall notify the division by filing with the division a form designated for that purpose indicating the effective date.

(b) If the form designated is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the division or published in the bulletin, and stating its effective date.

(3) The date designated shall be after the comment period specified on the rule analysis.

(4) The division shall publish the effective date in the next issue of the bulletin and digest. There is no publication deadline for a notice of effective date, nor requirement that it be published prior to the effective date.

**R15-4-6. Nonsubstantive Changes in Rules.**

(1) Pursuant to Subsections 63-46a-3(4)(d) and 63-46a-6(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.

(2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).

(a) The agency may seek the advice of the Attorney General or the division, but the agency is responsible for compliance with the cited criteria.

(3) Without complying with regular rulemaking procedures, an agency may make nonsubstantive changes in:

(a) proposed rules already published in the bulletin and digest but not made effective, or

(b) rules already effective.

(4) To make a nonsubstantive change in a rule, the agency shall:

(a) notify the division by filing with the division the form designated for nonsubstantive changes;

(b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and

(c) include with the notice the name of the agency head or designee authorizing the change.

(5) A nonsubstantive change becomes effective on the date the division makes the change in the Utah Administrative Code.

(6) The division shall record the nonsubstantive change and its effective date in the administrative rules register.

**R15-4-7. Substantive Changes in Proposed Rules.**

(1) Pursuant to Section 63-46a-6, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.

(a) The procedures of this section apply if:

(i) the agency determines a change in the rule is necessary;

(ii) the change is substantive under the criteria of Subsection 63-46a-2(19);

(iii) the rule was published as a proposal in the bulletin and digest; and

(iv) the rule has not been made effective under the procedures of Subsection 63-46a-6(1)(d) and Section R15-4-5.

(b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.

(2) To make a substantive change in a proposed rule, the agency shall file with the division:

(a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and

(b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published as described in Section R15-4-9.

(3) The division shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The division may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

**R15-4-8. Temporary 120-day Rules.**

(1) Pursuant to Section 63-46a-7, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with



the criteria of Subsection 63-46a-7(1).

(a) The division interprets the criteria of Subsection 63-46a-7(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

(3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:

(a) the rule shall become effective and enforceable on the day and hour it is recorded by the division unless the agency designates a later effective date on the rule analysis;

(b) no comment period is necessary;

(c) no public hearing is necessary; and

(d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the division, on the form or by memorandum, of an earlier expiration date.

(4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.

(5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.

(6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

#### **R15-4-9. Underscoring and Striking Out.**

(1) (a) Pursuant to Subsection 63-46a-4(2)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63-46a-4(2)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

(c) Consistent with legislative bill drafting technique, the struck out language shall be surrounded by brackets.

(2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

(3)(a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.

(b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:

(i) each page annotated "repealed in its entirety" or

(ii) the entire text struck out in its entirety and surrounded by one set of brackets.

(c) The division shall not publish repealed rules unless space is available within the page limits of the bulletin.

(4) When an agency fails to mark a change as described in this section, the director or his designee may refuse to codify the change. When determining whether or not to codify an unmarked change, the director shall consider:

(a) whether the unmarked change is substantive or nonsubstantive; and

(b) if the purpose of public notification has been adequately served.

(5) The director's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63-46a-16 and that the agency must comply with regular rulemaking procedures to make the change.

**R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.**

(1) Pursuant to Subsections 63-46a-4(3), 63-46a-6(1), 63-46a-7(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

(a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;

(b) estimate the incremental cost or savings and incremental compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);

(c) indicate that the amount is either a cost or a savings; and

(d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," or "other persons" as aggregated cost or savings;

(2) In addition, an agency may:

(a) provide a narrative description of anticipated cost or savings, and compliance cost;

(b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:

(i) current budgeted costs associated with the existing rule,

(ii) figures reported on a fiscal note attached to a related legislative bill, or

(iii) both (i) and (ii).

(3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from the anticipated cost or savings, and compliance cost figures.

(4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative

description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.

(5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "other persons," or any combination of these.

(6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the Division may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the Division refuses to register and publish a rule or change, it shall:

(a) return the rule or change to the agency with a notice indicating that the Division has refused to register and publish the rule or change;

(b) identify the reason or reasons why the Division refused to register and publish the rule or change; and

(c) indicate the filing deadlines for the next issue of the Bulletin.

#### **KEY**

administrative law

#### **Date of Enactment or Last Substantive Amendment**

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#### **Notice of Continuation**

October 16, 2000

#### **Authorizing, Implemented, or Interpreted Law**

63-46a-10

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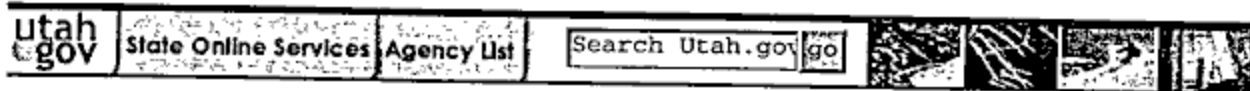
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# Rule R15-5. Administrative Rules Adjudicative Proceedings.

As in effect on September 1, 2002

## Table of Contents

- [R15-5-1. Purpose.](#)
- [R15-5-2. Authority.](#)
- [R15-5-3. Definitions.](#)
- [R15-5-4. Refusal to Publish or Register a Rule or Rule Change.](#)
- [R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.](#)
- [R15-5-6. Determining the Procedural Validity of a Rule.](#)
- [R15-5-7. Remedies Resulting from an Adjudicative Proceeding.](#)
- [KEY](#)
- [Date of Enactment or Last Substantive Amendment](#)
- [Notice of Continuation](#)
- [Authorizing, Implemented, or Interpreted Law](#)

### **R15-5-1. Purpose.**

- (1) This rule provides the procedures for informal adjudicative proceedings governing:
  - (a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and
  - (b) a determination by the division whether an agency rule meets the procedural requirements of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.
- (2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

### **R15-5-2. Authority.**

This rule is required by Sections 63-46b-4 and 63-46b-5, and is enacted under the authority of Subsection 63-46a-10(1)(m) and Sections 63-46b-4, 63-46b-5, and 63-46b-21.

### **R15-5-3. Definitions.**

- (1) The terms used in this rule are defined in Section 63-46b-2.

(2) In addition, "digest" means the Utah State Digest which summarizes the content of the bulletin as required under Subsection 63-46a-10(1)(f).

**R15-5-4. Refusal to Publish or Register a Rule or Rule Change.**

(1) The division shall not publish a proposed rule or rule change when the division determines the agency has not met the requirements of Title 63, Chapter 46a, or of Rules R15-3 or R15-4.

(2) The division shall not register an agency's notice of effective date, nor codify the rule or rule change in the Utah Administrative Code, if the agency exceeds the 120-day limit required by Subsection 63-46a-4(6)(a) as interpreted in Section R15-4-5.

(3) The division shall notify the agency of a refusal to publish or register a rule or rule change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

**R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.**

(1) An agency may request a review of a division refusal to publish or register a rule or rule change by filing a written petition for review with the division director.

(2) The division director shall grant or deny the petition within 20 days, and respond in writing giving the reasons for any denial.

(3) The agency may appeal the decision of the division director by filing a written appeal to the Executive Director of the Department of Administrative Services within 20 days of receipt of the division director's decision. The Executive Director shall respond within 20 days affirming or reversing the division director's decision.

**R15-5-6. Determining the Procedural Validity of a Rule.**

(1) A person may contest the procedural validity, or request a determination of whether a rule meets the requirements of Title 63, Chapter 46a, by filing a written petition with the division.

(a) The rule at issue may be a proposed rule or an effective rule.

(b) The petition must be received by the division within the two-year limit set by Section 63-46a-14.

(c) The petition may emanate from a rulemaking hearing as in Section R15-1-8.

(d) The petition shall specify the rule or rule change at issue and reasons why the petitioner deems it procedurally flawed or invalid.

(e) The petition shall be accompanied by any documents the division should consider in reaching its decision.

(f) The petition shall be signed and designate a telephone number where the petitioner can be contacted during regular business hours.

(2) The division shall respond to the petition in writing within 20 days of its receipt.

- (a) The division shall research all records pertaining to the rule or rule change at issue.
- (b) The response of the division shall state whether the rule is procedurally valid or invalid and how the agency may remedy any defect.
- (c) The division shall send a copy of the petition and its response to the pertinent agency.
- (3) The petitioner may request reconsideration of the division's findings by filing a written request for reconsideration with the division director.
- (a) The director may respond to the request in writing.
- (b) If the petitioner receives no response within 20 days, the request is denied.

**R15-5-7. Remedies Resulting from an Adjudicative Proceeding.**

- (1) A rule the division determines is procedurally invalid shall be stricken from the Utah Administrative Code and notice of its deletion published in the next issues of the bulletin and digest.
- (2) The division shall notify the pertinent agency and assist the agency in re-filing or otherwise remedying the procedural omission or error in the rule.
- (3) A rule the division determines is procedurally valid shall be published and registered promptly.

**KEY**

administrative procedure, administrative law

**Date of Enactment or Last Substantive Amendment**

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**Notice of Continuation**

October 16, 2000

**Authorizing, Implemented, or Interpreted Law**

63-46a-10; 63-46b-4; 63-46b-5; 63-46b-21

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**Rules. Please Note:** The Division of Administrative Rules is **not able** to answer questions about the content or application of these rules.

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 22, 2002

Mr. William J. Sinclair, Director  
Division of Radiation Control  
Department of Environmental Quality  
168 North 1950 West  
P. O. Box 144850  
Salt Lake City, UT 84114-4850

Dear Mr. Sinclair:

We have reviewed the final Utah regulations R313-17-2, "Public Notice and Public Comment Period;" R313-22-33, "Generic Requirements for the Issuance of Specific Licenses;" R313-70-7, "License Categories and Types of Fees for Radioactive Materials Licenses;" R313-15-1001, "Waste Disposal - General Requirements;" R313-19-2, "Requirements of General Applicability to Licensing of Radioactive Material - General;" R313-22-39, "Executive Secretary Action on Applications to Renew or Amend;" and R313-24, "Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements," which were sent to us by letter dated October 9, 2002. The regulations were reviewed to ensure that the requirements in the Uranium Mill Tailings Radiation Control Act (UMTRCA) are adequately addressed by the Utah regulations prior to Utah entering into an Agreement with the Nuclear Regulatory Commission (NRC) to relinquish Federal regulatory authority for 11e.(2) byproduct material. The regulations were reviewed by comparison to the equivalent (NRC) regulations in 10 CFR Part 40 including Appendix A and 10 CFR Part 150. We discussed our review of the final regulations with you on October 31, 2002.

As a result of our review, we have no compatibility comments. The review did identify an editorial suggestion to clarify the language of the final regulations. The suggestion is to insert "source material in" following the words "possession and use of" in the first line of R313-24-1, "Purpose and Authority." This would clarify what materials are possessed or used under the revised regulations. The NRC review does not include comments on the groundwater portion of the regulations which are being addressed separately in response to your letter dated October 23, 2002. Please note that we have limited our review to regulations required for compatibility and/or health and safety. We have determined that your final regulations, as adopted, meet the compatibility and health and safety categories established in Office of State and Tribal Programs (STP) Procedure SA-200. However, until NRC and Utah enter into an Agreement for 11e.(2) byproduct material, the 11e.(2) byproduct material rules may not be implemented.

The State Regulation Status (SRS) Data Sheet summarizes our knowledge of the status of other Utah regulations as indicated. This letter including the SRS Data Sheet is posted on the STP Web Site: <http://www.hsrdoernl.gov/nrc/rulemaking.htm>.

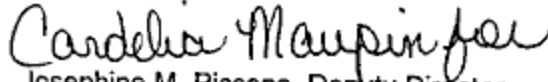
William J. Sinclair

2

November 22, 2002

If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me or Dennis Solienberger of my staff at 301-415-2819 or DMS4@nrc.gov.

Sincerely,



Josephine M. Piccone, Deputy Director  
Office of State and Tribal Programs

Enclosure:  
As stated

# STATE REGULATION STATUS

State: Utah

[Two amendments reviewed are identified by a ★ at the beginning of each equivalent NRC regulation.]

Tracking Ticket Number: 2-248  
Date: November 22, 2002

NRC Chronology Identification	FR Notice (Due Date for State Implementation)	RATS ID	Proposed (P) / Final (F) Rule / ML #	NRC Review / Y, N / Date / ML #	Final State Regulation (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			1/10/94
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required <sup>3</sup>
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F	N 2/10/98	1/23/98
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4			10/26/94
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	P	N 1/26/98	3/10/95
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required <sup>3</sup>
Decommissioning Recordkeeping and License Termination: Documentation Additions (Restricted areas and spill sites)-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F	N 1/8/97	11/15/96
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F	N 6/14/00	3/10/00
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3	P	N 9/23/96	5/31/96
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618; (none)	1994-1			Not required <sup>3</sup>
★Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards- Part 40	59 FR 28220; (7/1/97)	1994-2	F	N 11/22/02 ML023100574	10/7/02 <sup>5</sup>
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 2/10/98	7/18/97
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243; 60 FR 322; (1/1/98)	1995-1	F	N 2/10/98	7/18/97
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	P	N 1/26/98	3/20/98
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15549; 60 FR 25983; (3/1/98)	1995-3	P	N 1/26/98	1/23/98
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (8/30/98)	1995-4			7/18/97
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	P	N 1/26/98	3/20/98
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (1/24/98)	1995-6	F	N 2/10/98	7/18/97
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	P	N 1/26/98	8/11/98

NRC Chronology Identification	FR Notice (Due Date for State Implementation)	RATS ID	Proposed (P) / Final (F) Rule / ML #	NRC Review / Y, N / Date / ML #	Final State Regulation (Effective Date)
10 CFR Part 71: Compatibility with the International Atomic Energy Agency - Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1	F	N 4/16/99	3/12/99
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2	F	N 2/10/98	Not required <sup>3</sup>
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	F Part 30	N 2/10/98	3/20/98
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/29/00)	1997-1	P	N 1/26/98	3/20/98
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2			6/11/99
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/23/00)	1997-3	P	N 1/26/00	3/20/98
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required <sup>3</sup>
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	F	N 4/1/98	5/15/97
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F	N 6/14/00	3/10/00
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/10/01)	1997-7	F	N 4/16/99	3/12/99
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1	F ML01100015	N 7/31/01 ML012150220	1/26/01
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required <sup>3</sup>
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required <sup>3</sup>
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/19/01)	1998-4	P ML010870073	N 4/27/01 ML011170330	5/11/01
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	F ML013530478	Y 2/7/02 ML020390486	9/14/01
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/1/20/01)	1998-6	F ML013530478	N 2/7/02 ML020390486	9/14/01
★ Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	F ML023100574	N 11/22/02 ML023290240	10/7/02 <sup>3</sup>
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required <sup>3</sup>
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524; (2/2/03)	1999-3	F ML013530478	N 2/7/02 ML020390486	9/14/01

NRC Chronology Identification		FR Notice (Due Date for State Implementation)	RATS ID	Proposed (P) / Final (F) Rule / ML # <sup>4</sup>	NRC Review / Y, N / Date / ML # <sup>4</sup>	Final State Regulation <sup>1</sup> (Effective Date)
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39		65 FR 20337; (5/17/03)	2000-1	F ML012850044	N 12/27/01 ML020020182	9/14/01
New Dosimetry Technology-Parts 34, 36, 39		65 FR 63750; (1/8/04)	2000-2	P Part 34 ML010870073	N 4/27/01 ML011170330	
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material-Parts 30, 31, and 32		65 FR 79162; (2/16/04)	2001-1			
Revision of the Skin Dose Limit-Part 20 that became effective April 5, 2002.		67 FR 16298; (4/5/05)	2002-1			
Medical Use of Byproduct Material-Parts 20, 32, and 35		67 FR 20249; (4/24/05)	2002-2			

1. Or other generic Legally Binding Requirements.

2. (Y/N) Y means "Yes," there are comments in the review letter that the State needs to address.  
N means "No," there are no comments in the review letter.

3. Not required means these regulations are not required for purposes of compatibility.

4. ADAMS ML Number

5. The regulation package contained several regulations with earlier effective dates. The uranium milling regulations are not to be implemented until the amended Agreement is signed and effective.

**From:** "Rule Mailbox" <rules@utah.gov>  
**To:** "William Sinclair" <bsinclair@utah.gov>, "William Sinclair" <bsinclair@utah.gov>  
**Date:** 12/23/02 4:03PM  
**Subject:** eRules--Filing Submitted: No. 25882 for the Bulletin

A filing has been submitted.

DAR No. 25882

Department: Environmental Quality

Agency: Radiation Control

Code Ref. No.: R313-24-1

Title: Uranium Mills and Source Material Mill Tailings Disposal Requirements, Purpose and Authority

Available at:

<http://filings.rules.state.ut.us/MainRuleFilingPage.asp?strForm=NonSubChange.asp&intKey=41799>

The Division of Administrative Rules' staff will review this rule to ensure that the required information has been provided and that the text is correctly marked. If the staff has questions or identifies problems, you will be contacted by E-mail.

Thank you!

Division of Administrative Rules

rules@utah.gov

801-538-3218

**CC:** <rules@utah.gov>

State of Utah

**NOTICE OF NONSUBSTANTIVE RULE CHANGE**

DAR file no:

Date filed:

Utah Admin. Code

ref. (R no.):

  -  - 

Time filed:

1. Agency: 

Room no.: 212

Building:

Street  
address 1: 168 N 1950 WStreet  
address 2:

City,state,zip: SALT LAKE CITY, UT 84116-3085

Mailing  
address 1: PO BOX 144850Mailing  
address 2:

City,state,zip: SALT LAKE CITY, UT 84114-4850

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
William Sinclair	801-536-4250	801-533-4097	bsinclair@utah.gov	<input type="button" value="Remove"/>

(Interested persons may inspect this filing at the above address or at DAR between 8 00 a m and 5 00 p m on business days)

2. Title of rule or section (catchline):

3. Purpose of or reason for the nonsubstantive change:

4. This change is a response to comments by the Administrative Rules Review Committee. ☐ Yes ☒ No

5. Summary of the nonsubstantive change:

6. This rule change adds or updates an incorporated title: (submit a copy to DAR):

7. Indexing information - keywords (maximum of four, in lower case):

tailings, source material, uranium mills, sou

8. **Attach an RTF document containing the text of this rule change (filename):**

There is currently a document associated with this filing.

**To the agency:** A nonsubstantive change becomes effective on the date the Division of Administrative Rules makes the change to the rule in the *Utah Administrative Code* (see Subsection R15-4-6(5)).

**AGENCY AUTHORIZATION**

Agency head or designee, and title:	Sinclair, William Director <input type="button" value="Change"/>	Date (mm/dd/yyyy):	12/23/2002
--	---	-----------------------	------------



**NONSUBSTANTIVE RULE CHANGE SUBMITTED**

You have submitted your filing. Each filing you submit should generate a separate E-mail message confirming that the filing has been received. If you do not receive an E-mail confirmation within the next 30 minutes, please contact Nancy Lancaster (801-538-3218 or [nllancaster@utah.gov](mailto:nllancaster@utah.gov)) or Mike Broschinsky (801-538-3003 or [mbroschi@utah.gov](mailto:mbroschi@utah.gov)).

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<a href="#">24052</a>	<b>R313-15-502: Conditions Requiring Individual Monitoring of External and Internal Occupational Dose</b>				
	Codified	Amendment	9/13/2001 2:48:57 PM	ON	
<a href="#">24093</a>	<b>R313-25: License Requirements for Land Disposal of Radioactive Waste - General Provisions</b>				
	Codified	5-year Review	10/10/2001 2:16:04 PM	ON	
<a href="#">24094</a>	<b>R313-19: Requirements of General Applicability to Licensing of Radioactive Material</b>				
	Codified	5-year Review	10/10/2001 2:31:45 PM	ON	
<a href="#">24095</a>	<b>R313-22: Specific Licenses</b>				
	Codified	5-year Review	10/10/2001 2:39:43 PM	ON	
<a href="#">24096</a>	<b>R313-28: Use of X-rays in the Healing Arts</b>				
	Codified	5-year Review	10/10/2001 2:48:04 PM	ON	
<a href="#">24097</a>	<b>R313-32: Medical Use of Radioactive Material</b>				
	Codified	5-year Review	10/10/2001 2:54:30 PM	ON	
<a href="#">24098</a>	<b>R313-36: Special Requirements for Industrial Radiographic Operations</b>				
	Codified	5-year Review	10/10/2001 3:02:16 PM	ON	
<a href="#">24100</a>	<b>R313-70: Payments, Categories and Types of Fees</b>				
	Codified	5-year Review	10/10/2001 3:09:32 PM	ON	
<a href="#">24108</a>	<b>R313-16: General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines</b>				
	Codified	Amendment	10/12/2001 9:29:47 AM	ON	
<a href="#">24109</a>	<b>R313-28-31: General and Administrative Requirements</b>				
	Codified	Amendment	10/12/2001 9:36:36 AM	ON	
<a href="#">24360</a>	<b>R313-35: Requirements for X-ray Equipment Used for Non-Medical Applications</b>				
	Codified	5-year Review	1/2/2002 2:28:44 PM	ON	
<a href="#">24713</a>	<b>R313-70-7: Payments, Categories and Types of Fees</b>				
	Withdrawn	Amendment	4/12/2002 1:30:43 PM	ON	<a href="#">Eff. Date</a>
<a href="#">24715</a>	<b>R313-17-2: Public Notice and Public Comment Period</b>				
	Reviewed	Rule Change	6/14/2002 9:55:05 AM	ON	
<a href="#">24715</a>	<b>R313-17-2: Public Notice and Public Comment Period</b>				
	Bulletin Pub	Amendment	4/15/2002 8:52:24 AM	ON	
<a href="#">24716</a>	<b>R313-22-33: Specific Licenses</b>				
	Codified	Amendment	4/15/2002 9:00:11 AM	ON	
<a href="#">24717</a>	<b>R313-70-7: License Categories and Types of Fees for Radioactive Materials Licenses</b>				
	Codified	Amendment	4/15/2002 9:05:02 AM	ON	

<u>24738</u>	<b>R313-24: Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements</b>				
	Reviewed	Rule Change	7/23/2002 3:16:29 PM	ON	
<u>24738</u>	<b>R313-24: Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements</b>				
	Reviewed	New Rule	4/19/2002 11:42:57 AM	ON	
<u>24757</u>	<b>R313-22-39: Executive Secretary Action on Applications to Renew or Amend</b>				
	Codified	Amendment	4/25/2002 8:30:54 AM	ON	
<u>24758</u>	<b>R313-19-2: Requirements of General Applicability to Licensing of Radioactive Material</b>				
	Reviewed	Amendment	4/25/2002 8:42:05 AM	ON	
<u>24758</u>	<b>R313-19-2: Requirements of General Applicability to Licensing of Radioactive Material</b>				
	Reviewed	Rule Change	7/25/2002 9:40:26 AM	ON	
<u>24759</u>	<b>R313-15-1001: Waste Disposal - General Requirements</b>				
	Codified	Amendment	4/25/2002 8:45:29 AM	ON	
<u>24969</u>	<b>R313-70-7: License Categories and Types of Fees for Radioactive Materials Licenses</b>				
	Reviewed	Amendment	6/14/2002 10:06:59 AM	ON	
<u>25785</u>	<b>R313-12-3: Definitions</b>				
	Bulletin Prep	Amendment	12/12/2002 8:00:54 AM	ON	
<u>25786</u>	<b>R313-28: Use of X-Rays in the Healing Arts</b>				
	Bulletin Prep	Amendment	12/12/2002 8:11:40 AM	ON	
<u>25882</u>	<b>R313-24-1: Uranium Mills and Source Material Mill Tailings Disposal Requirements, Purpose and Authority</b>				
	New	Nonsubstantive	12/23/2002 4:12:31 PM	ON	
<u>Draft</u>	<b>R313-15: Standards for Protection Against Radiation</b>				
	New	5-year Review		OFF	<u>Delete</u>

**R313. Environmental Quality, Radiation Control.**

**R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.**

**R313-24-1. Purpose and Authority.**

(1) The purpose of this rule is to prescribe requirements for possession and use of source material in milling operations such as conventional milling, in-situ leaching, or heap-leaching. The rule includes requirements for the possession of byproduct material, as defined in R313-12-3 (see "byproduct material" definition (b)), from source material milling operations, as well as, possession and maintenance of a facility in standby mode. In addition, requirements are prescribed for the receipt of byproduct material, from other persons for possession and disposal. The rule also prescribes requirements for receipt of byproduct material, from other persons for possession and disposal incidental to the byproduct material generated by the licensee's source material milling operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-24 are in addition to, and not substitution for, the other applicable requirements of Title R313. In particular, the provisions of Rules R313-12, R313-15, R313-18, R313-19, R313-21, R313-22, and R313-70 apply to applicants and licensees subject to Rule R313-24.

**R313-24-2. Scope.**

(1) The requirements in Rule R313-24 apply to source material milling operations, byproduct material, and byproduct disposal facilities.

**R313-24-3. Environmental Analysis.**

(1) Each new license application, renewal, or major amendment shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. The environmental report shall present a discussion of the following:

(a) An assessment of the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment;

(b) An assessment of any impact on waterways and groundwater resulting from the activities conducted pursuant to the license or amendment;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to the license or amendment; and

(d) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment.

(2) Commencement of construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.

(3) The Executive Secretary shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2.

**R313-24-4. Clarifications or Exceptions.**

For the purposes of Rule R313-24, 10 CFR 40.2a through 40.4; 40.12; 40.20(a); 40.21; 40.26(a) through (c); 40.31(h); 40.41(c); 40.42(k) introduction and 40.42(k)(3)(i); 40.61(a) and (b); 40.65; and Appendix A to Part 40(2002) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion and substitution of the following:

(a) Exclude 10 CFR 40.26(c)(1) and replace with "(1) The provisions of Sections R313-12-51, R313-12-52, R313-12-53, R313-19-34, R313-19-50, R313-19-61, R313-24-1, Rules R313-14, R313-15, R313-18, and R313-24 (incorporating 10 CFR 40.2a, 40.3, 40.4, and 40.26 by reference)";

(b) In Appendix A to 10 CFR 40, exclude Criterion 5B(1) through 5H, Criterion 7A, Criterion 13, and replace the excluded Criterion with "Utah Administrative Code, R317-6, Ground Water Quality Protection"; and

(c) In Appendix A to 10 CFR 40, exclude Criterion 11A through 11F and Criterion 12;

(2) The substitution of the following:

(a) "10 CFR 40" for reference to "this part" as found throughout the incorporated text;

(b) "Executive Secretary" for reference to "Commission" in the first and fourth references contained in 10 CFR 40.2a, in 10 CFR 40.3, 40.20(a), 40.26, 40.41(c), 40.61, and 40.65;

(c) "Rules R313-19, R313-21, or R313-22" for "Section 62 of the Act" as found in 10 CFR 40.12(a);

(d) "Rules R313-21 or R313-22" for reference to "the regulations in this part" in 10 CFR 40.41(c);

(e) "Section R313-19-100" for reference to "part 71 of this chapter" as found in 10 CFR 40.41(c);

(f) In 10 CFR 40.42(k)(3)(i), "R313-15-401 through R313-15-406" for reference to "10 CFR part 20, subpart E";

(g) "Source material milling" for reference to "uranium milling, in production of uranium hexafluoride, or in a uranium enrichment facility" as found in 10 CFR 40.65(a);

(h) "Executive Secretary" for reference to "appropriate NRC Regional Office shown in Appendix D to 10 CFR part 20 of this chapter, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in 10 CFR 65(a)(1);

(i) "require the licensee to" for reference to "require to" in 10 CFR 40.65(a)(1); and

(j) In Appendix A to 10 CFR part 40, the following substitutions:

(i) "R313-12-3" for reference to "Sec. 20.1003 of this chapter" as found in the first paragraph of the introduction to Appendix A;

(ii) "Utah Administrative Code, Rule R317-6, Ground Water Quality Protection" for ground water standards in "Environmental Protection Agency in 40 CFR part 192, subparts D and E" as found in the Introduction, paragraph 4; or "Environmental Protection Agency in 40 CFR part 192, subparts D and E (48 FR 45926; October 7, 1983)" as found in Criterion 5;

(iii) "Board" for reference to "Commission" in the definition of "compliance period," in paragraph five of the introduction and in Criterion 5A(3);

(iv) "Executive Secretary" for reference to "Commission" in the definition of "closure plan", in paragraph five of the introduction, and in Criteria 6(2), 6(4), 6(6), 6A(2), 6A(3), 9, and 10;

(v) "license issued by the Executive Secretary" for reference to "Commission license" in the definition of "licensed site," in the introduction to Appendix A;

(vi) "Executive Secretary" for reference to "NRC" in Criterion 4D;

(vii) "representatives of the Executive Secretary" for reference to "NRC staff" in Criterion 6(6);

(viii) "Executive Secretary-approved" for reference to "Commission-approved" in Criterion 6A(1) and Criterion 9;

(ix) "Executive Secretary" for reference to "appropriate NRC regional office as indicated in Criterion 8A" as found, Criterion 8, paragraph 2 or for reference to "appropriate NRC regional office as indicated in Appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in Criterion 8A; and

(x) "Executive Secretary" for reference to "the Commission or the State regulatory agency" in Criterion 9, paragraph 2.

**R313. Environmental Quality, Radiation Control.**

**R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.**

**R313-24-1. Purpose and Authority.**

(1) The purpose of this rule is to prescribe requirements for possession and use of source material in milling operations such as conventional milling, in-situ leaching, or heap-leaching. The rule includes requirements for the possession of byproduct material, as defined in R313-12-3 (see "byproduct material" definition (b)), from source material milling operations, as well as, possession and maintenance of a facility in standby mode. In addition, requirements are prescribed for the receipt of byproduct material, from other persons for possession and disposal. The rule also prescribes requirements for receipt of byproduct material, from other persons for possession and disposal incidental to the byproduct material generated by the licensee's source material milling operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-24 are in addition to, and not substitution for, the other applicable requirements of Title R313. In particular, the provisions of Rules R313-12, R313-15, R313-18, R313-19, R313-21, R313-22, and R313-70 apply to applicants and licensees subject to Rule R313-24.

**R313-24-2. Scope.**

(1) The requirements in Rule R313-24 apply to source material milling operations, byproduct material, and byproduct disposal facilities.

**R313-24-3. Environmental Analysis.**

(1) Each new license application, renewal, or major amendment shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. The environmental report shall present a discussion of the following:

(a) An assessment of the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment;

(b) An assessment of any impact on waterways and groundwater resulting from the activities conducted pursuant to the license or amendment;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to the license or amendment; and

(d) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment.

(2) Commencement of construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.

(3) The Executive Secretary shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2.

**R313-24-4. Clarifications or Exceptions.**

For the purposes of Rule R313-24, 10 CFR 40.2a through 40.4; 40.12; 40.20(a); 40.21; 40.26(a) through (c); 40.31(h); 40.41(c); 40.42(k) introduction and 40.42(k)(3)(i); 40.61(a) and (b); 40.65; and Appendix A to Part 40(2002) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion and substitution of the following:

(a) Exclude 10 CFR 40.26(c)(1) and replace with "(1) The provisions of Sections R313-12-51, R313-12-52, R313-12-53, R313-19-34, R313-19-50, R313-19-61, R313-24-1, Rules R313-14, R313-15, R313-18, and R313-24 (incorporating 10 CFR 40.2a, 40.3, 40.4, and 40.26 by reference)";

(b) In Appendix A to 10 CFR 40, exclude Criterion 5B(1) through 5H, Criterion 7A, Criterion 13, and replace the excluded Criterion with "Utah Administrative Code, R317-6, Ground Water Quality Protection"; and

(c) In Appendix A to 10 CFR 40, exclude Criterion 11A through 11F and Criterion 12;

(2) The substitution of the following:

(a) "10 CFR 40" for reference to "this part" as found throughout the incorporated text;

(b) "Executive Secretary" for reference to "Commission" in the first and fourth references contained in 10 CFR 40.2a, in 10 CFR 40.3, 40.20(a), 40.26, 40.41(c), 40.61, and 40.65;

(c) "Rules R313-19, R313-21, or R313-22" for "Section 62 of the Act" as found in 10 CFR 40.12(a);

(d) "Rules R313-21 or R313-22" for reference to "the regulations in this part" in 10 CFR 40.41(c);

(e) "Section R313-19-100" for reference to "part 71 of this chapter" as found in 10 CFR 40.41(c);

(f) In 10 CFR 40.42(k)(3)(i), "R313-15-401 through R313-15-406" for reference to "10 CFR part 20, subpart E";

(g) "Source material milling" for reference to "uranium milling, in production of uranium hexafluoride, or in a uranium enrichment facility" as found in 10 CFR 40.65(a);

(h) "Executive Secretary" for reference to "appropriate NRC Regional Office shown in Appendix D to 10 CFR part 20 of this chapter, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in 10 CFR 65(a)(1);

(i) "require the licensee to" for reference to "require to" in 10 CFR 40.65(a)(1); and

(j) In Appendix A to 10 CFR part 40, the following substitutions:

(i) "R313-12-3" for reference to "Sec. 20.1003 of this chapter" as found in the first paragraph of the introduction to Appendix A;

(ii) "Utah Administrative Code, Rule R317-6, Ground Water Quality Protection" for ground water standards in "Environmental Protection Agency in 40 CFR part 192, subparts D and E" as found in the Introduction, paragraph 4; or "Environmental Protection Agency in 40 CFR part 192, subparts D and E (48 FR 45926; October 7, 1983)" as found in Criterion 5;

(iii) "Board" for reference to "Commission" in the definition of "compliance period," in paragraph five of the introduction and in Criterion 5A(3);

(iv) "Executive Secretary" for reference to "Commission" in the definition of "closure plan", in paragraph five of the introduction, and in Criteria 6(2), 6(4), 6(6), 6A(2), 6A(3), 9, and 10;

(v) "license issued by the Executive Secretary" for reference to "Commission license" in the definition of "licensed site," in the introduction to Appendix A;

(vi) "Executive Secretary" for reference to "NRC" in Criterion 4D;

(vii) "representatives of the Executive Secretary" for reference to "NRC staff" in Criterion 6(6);

(viii) "Executive Secretary-approved" for reference to "Commission-approved" in Criterion 6A(1) and Criterion 9;

(ix) "Executive Secretary" for reference to "appropriate NRC regional office as indicated in Criterion 8A" as found, Criterion 8, paragraph 2 or for reference to "appropriate NRC regional office as indicated in Appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in Criterion 8A; and

(x) "Executive Secretary" for reference to "the Commission or the State regulatory agency" in Criterion 9, paragraph 2.

KEY: environmental analysis, uranium mills, tailings, monitoring  
 2002 19-3-104  
19-3-108

AGREEMENT  
BETWEEN THE  
UNITED STATES NUCLEAR REGULATORY COMMISSION  
AND THE  
STATE OF UTAH  
FOR  
DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY  
AND  
RESPONSIBILITY WITHIN THE STATE PURSUANT TO  
SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

WHEREAS, The Governor of the State of Utah is authorized under Utah Code Annotated 26-1-29 to enter into this Agreement with the Commission; and

WHEREAS, The Governor of the State of Utah certified on November 14, 1983, that the State of Utah (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

WHEREAS, The Commission found on March 12, 1984, that the program of the State for the regulation of the materials covered by this Agreement



is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

WHEREAS, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

WHEREAS, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

#### ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e. (1) of the Act;

B. Source materials; and

- C. Special nuclear materials in quantities not sufficient to form a critical mass.

ARTICLE II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

- A. The construction and operation of any production or utilization facility;
- B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
- C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;
- D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission;
- E. The land disposal of source, byproduct and special nuclear material received from other persons; and
- F. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

ARTICLE III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E or F, whereby the State can exert regulatory control over the materials stated therein.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the

Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j, of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take

necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

ARTICLE IX

This Agreement shall become effective on April 1, 1984, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Salt Lake City, Utah, in triplicate, this 29th day of March, 1984.

FOR THE UNITED STATES  
NUCLEAR REGULATORY COMMISSION

  
Ronzio J. Palladino, Chairman

FOR THE STATE OF UTAH

  
Scott M. Matheson, Governor



*Amendment to Agreement  
Between the United States Nuclear Regulatory Commission  
and the State of Utah  
for  
Discontinuance of Certain Commission Regulatory Authority  
and  
Responsibility Within the State Pursuant to  
Section 274 of the Atomic Energy Act of 1954, as amended.*

WHEREAS, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of March 29, 1984) with the State of Utah under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), which Agreement became effective on April 1, 1984, and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8 and Section 161 of the Act with respect to byproduct materials as defined in Section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

WHEREAS, the Governor of the State of Utah is authorized under Utah Code Annotated 26-1-29 to enter into this amendment to the Agreement of March 29, 1984, between the Commission and the State of Utah; and

WHEREAS, the Governor of the State of Utah has requested this amendment in accordance with Section 274 of the Act by certifying on July 17, 1989 that the State of Utah has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the land disposal within the State of source, byproduct and special nuclear material received from other persons and that the State desires to assume regulatory responsibility for such materials; and

WHEREAS, the Commission found on April 30, 1990 that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

WHEREAS, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

WHEREAS, this amendment to the Agreement of March 29, 1984, is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended.

NOW, THEREFORE, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of March 29, 1984, is amended by deleting "and" at end of paragraph B., by adding ";and," after the words "critical mass" in paragraph C., and inserting the following new paragraph immediately after paragraph C.:


D. The land disposal of source, byproduct and special nuclear material received from other persons.

Section 2. Article II of the Agreement of March 29, 1984, is amended by deleting paragraph F. and by redesignating paragraph F. as paragraph E.


This amendment shall become effective on May 9, 1990, and shall remain in effect unless terminated at such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984.

Done at Lake City, Utah, in triplicate, this 8th day of May, 1990.

FOR THE UNITED STATES  
NUCLEAR REGULATORY  
COMMISSION

  
Kenneth M. Carr,  
Chairman

FOR THE STATE OF UTAH

  
Norman H. Bangert,  
Governor

*Amendment to Agreement  
Between the United States Nuclear Regulatory Commission  
and the State of Utah  
for  
Discontinuance of Certain Commission Regulatory Authority  
and  
Responsibility Within the State Pursuant to  
Section 274 of the Atomic Energy Act of 1954, as amended*

*WHEREAS, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of March 29, 1984) with the State of Utah under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act) which became effective on April 1, 1984, and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8 and Section 161 of the Act with respect to byproduct materials as defined in Section 11e.(2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and*

*WHEREAS, the Commission entered into an amendment to the Agreement of March 29, 1984 pursuant to the Act and provided for discontinuance of regulatory authority of the Commission with respect to the land disposal of source, byproduct, and special nuclear material received from other persons which became effective on May 9, 1990; and*

*WHEREAS, the Governor of the State of Utah is authorized under Utah Code Annotated 19-3-113 to enter into an additional amendment to the Agreement of March 29, 1984, notwithstanding the amendment of May 9, 1990, between the Commission and the State of Utah; and*

*WHEREAS, the Commission found on [insert date] that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and*

*WHEREAS, the State and Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and*

*WHEREAS, this additional amendment to the Agreement of March 29, 1984, is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended.*

*NOW, THEREFORE, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:*



*Section 1. Article 1 of the amended Agreement of May 9, 1990, is amended by adding "and 11e.(2)" after the words "11e.(1)" in paragraph A*

*Section 2. Article of the amended Agreement of May 9, 1990, is amended by deleting paragraph E.*

*This amendment shall become effective on [insert date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984.*

*Done, in triplicate, this [insert date, year]*

**FOR THE UNITED STATES  
NUCLEAR REGULATORY  
COMMISSION**

*[insert new Chairman name]  
Chairman*

**FOR THE STATE OF UTAH**

**Michael O. Leavitt  
Governor**